

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

CHAD R PETTIT

Claimant,

and

APAC CUSTOMER SERVICES INC

Employer.

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HEARING NUMBER: 14B-UI-04480

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2-A

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Claimant, Chad R. Pettit, worked for APAC Customer Services, Inc. beginning March 1, 2010 through March 26, 2014 as a full-time customer service representative. (25:52-25:23) The Employer has a policy regarding the misuse of company computer for e-mail and social media. Mr. Pettit received two warnings: one in October of 2012 for inappropriate use of company e-mail when he sent other agents an e-mail clarifying faulty information regarding overtime work and/or pay (12:40-12:34; 10:54-10:50); and one in late November 2013, for violating the Employer's social media policy when he made a derogatory remark about the Employer on his Facebook page using his personal computer. (9:15-8:42)

On March 26, 2013, the Claimant sent a mass e-mail to other agents with a link to a website that explained how to use instant messaging, which unbeknownst to him had become reserved only for supervisors and level 2 employees beginning sometime in early November of 2013. (23:45; 17:05-16:48) The way Mr. Pettit learned of this website was through IT personnel who serviced the update on his computer.

(23:29-23:13) The reason the company discontinued instant messaging between agents was because the agents used to be split between two buildings in the past, and there was a need for interoffice communication via instant messaging between agents. (22:23-22:15) However, when the agents were consolidated in one building, the use of instant messaging was no longer necessary (22:13-22:04)

The Employer discharged the Claimant for inappropriate use of company e-mail on the March 26, 2014. (24:51-24:21; 23:05-22: 13:21-13:07) When asked why he sent the mass e-mail to the other agents on March 26, 2014, Mr. Pettit indicated that he believed the other agents could use the informational link (19:00-18:41) and that he and the other agents had never been told they could no longer use the Spark Messaging Program. (15:35-15:33) Mr. Pettit also indicated that Spark Messaging was still installed on his desktop, and he didn't realize he could no longer use it.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2013) provides:

Discharge for Misconduct. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(a):

Misconduct is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in the carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665, (Iowa 2000) (quoting Reigelsberger v. Employment Appeal Board, 500 N.W.2d 64, 66 (Iowa 1993)).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct

precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 NW2d 661 (Iowa 2000).

Both parties provided conflicting testimony regarding whether or not the Employer put agents on notice that they were no longer to use the instant messaging system. The Employer provided no documentation to corroborate that Mr. Pettit was prohibited from accessing a system that he had previously used to communicate with his fellow agents. His testimony that he didn't realize that forwarding this information was inappropriate is credible. It would seem that if this was now company policy, the IT personnel who passed on the link would have forewarned him that he could no longer access Spark Messaging System at all. While Mr. Pettit had been warned about sending e-mails to employees in the past, that warning occurred over a year ago. At worst, the Claimant's decision to share what he believed in good faith to be useful information with his co-workers was poor judgment that didn't rise to the legal definition of misconduct. And while the Employer may have compelling business reasons to terminate the Claimant, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983); see also, Breithaupt v. Employment Appeal Board, 453 N. W. 2d 532, 535 (Iowa App. 1990).

DECISION:

The administrative law judge's decision dated June 16, 2014 is **REVERSED**. The Claimant was discharged for no disqualifying reason. Accordingly, the Claimant is allowed benefits provided the Claimant is otherwise eligible.

Kim D. Schmett

Ashley R. Koopmans

DISSENTING OPINION OF CLOYD (ROBBY) ROBINSON:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the administrative law judge's decision in its entirety.

Cloyd (Robby) Robinson

AMG/fnv