

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**LORI PITZ**  
Claimant

**APPEAL NO. 10A-UI-07154-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARLISLE/RYAN DIGITAL SERVICES INC**  
Employer

**Original Claim: 04/11/10  
Claimant: Appellant (1)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

**STATEMENT OF THE CASE:**

Lori Pitz (claimant) appealed an unemployment insurance decision dated July 7, 2010, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Carlisle/Ryan Digital Services, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 7, 2010. The claimant participated in the hearing. The employer participated through co-owners Joe Ryan and Marybeth Carlisle Galles. Claimant's Exhibits A and B were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-related misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time customer service representative from November 2007 through April 14, 2010. She was discharged for "acting in a manner inconsistent with the betterment of the company." The claimant started her own design production company in 2008 and the employer learned that she was taking business away and converting it to her own company. The employer learned this fact when it conducted an audit of the claimant's company computer on approximately August 7, 2010. There were three blatant emails in which the claimant took away the employer's business and there were multiple other emails that were personal in nature and unrelated to business, which was a violation of company policy.

The claimant received an email at her company email on January 27, 2010 from Beth Hoden, who was asking if there was someone at Carlisle who could design. The claimant forwarded this email to her personal Pitz Production email account and replied that, "I am the designer at Carlisle-Ryan also, but I thought it might be easier and cheaper for you guys if you went through me personally for the design, otherwise the cost at CR could be quite high since we charge by

the hour.” On February 10, 2010, the claimant advised Shelly Koelker that she would personally design some invitations and would get them printed at work, since “the print guy owes me a few favors.” The third email was written on March 1, 2010 to Alissa and the claimant suggested she use the software at her home instead of work, with the only difference being that she would get paid instead of the employer.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

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

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

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

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 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 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 claimant was discharged on April 14, 2010 for taking company business away from the employer and converting it to her personal business. Even without warning, the claimant knew or should have known that working toward her own business that was in direct competition with the employer was not in the employer's best interests. She had a duty to support the employer's business rather than use it to promote her own business.

The claimant's actions demonstrate a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The administrative law judge holds that the claimant was discharged for an act of misconduct and, as such, is disqualified from the receipt of unemployment insurance benefits.

**DECISION:**

The unemployment insurance decision dated July 7, 2010, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw