

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARVIN W LEROY
Claimant

APPEAL NO. 13O-UI-07520-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOHN DEERE SHARED SERVICES INC
Employer

OC: 10/21/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

Marvin W. LeRoy filed a timely appeal from a representative's decision dated November 26, 2012, reference 01, which denied unemployment insurance benefits finding the claimant was discharged from work on October 9, 2012 for violation of a known company rule. After due notice was provided, a telephone hearing was conducted on March 28, 2013. The hearing had previously been postponed on approximately three occasions by the request of both the claimant and the employer. Mr. LeRoy responded to the notice of hearing by submitting a telephone number for the March 28, 2013 hearing, but Mr. LeRoy did not respond to repeated attempts to contact him at the telephone number he provided although repeated messages were left about attempts to reach him. During this time Mr. LeRoy had telephoned the Appeals Section indicating that his telephone was not ringing but apparently the claimant was receiving the messages left by the administrative law judge. This information was transmitted to the administrative law judge via instant messaging and a special effort to accommodate claimant's described telephone issues was undertaken. Arrangements were made by the administrative law judge to have a designated clerk at the Appeals Section forward Mr. LeRoy's next inbound call to the administrative law judge by the staff person and the administrative law judge re-called the claimant leaving a specific message for the claimant to again contact the Appeals Section and that his call would be patched through to the administrative law judge for the hearing. Mr. LeRoy did not comply with these instructions. Participating in the hearing on this matter on March 28, 2013 were Ms. Sarah Sinning, Human Resource Manager of Operations and Mr. Chris Gutman, Senior Engine Controls System Engineer, who was subpoenaed at Mr. LeRoy's request. On March 29, 2013 the administrative law judge issued a Decision on the Record that confirmed that the evidence in the record established misconduct sufficient to warrant the denial of unemployment insurance benefits and concluded that the Agency's unemployment insurance decision previously entered was correct and was affirmed. Mr. LeRoy filed an appeal with the Employment Appeal Board requesting that the matter be remanded for a new hearing.

By a decision dated June 24, 2013, the Employment Appeal Board found that the claimant did not provide good cause to remand the matter for a new hearing and denied Mr. LeRoy's request for a new hearing. The matter was however, remanded to the administrative law judge. The Employment Appeal Board found that the administrative law judge should have issued a

decision reflecting the evidence taken in the record during the March 28, 2013 hearing of the matter. The remand was only for the limited purpose of having the administrative law judge enter a more detailed decision based upon the existing hearing record. The Employment Appeal Board directed that no new hearing should be held. A copy of the Employment Appeal Board decision was mailed both to the claimant at his address of record and to John Deere Shared Services, Inc. at the employer's address of record.

The Appeals Section scheduling clerk set 11:30 a.m., Wednesday, July 31, 2013 for the administrative law judge to review the Employment Appeal Board's directive, however, notices of hearing were also inadvertently sent to the parties. The administrative law judge was fully apprised that the Board had directed that no new hearing should be conducted but nevertheless checked the Appeals Section's electronic system to determine if any telephone numbers had been provided and found that no numbers had been provided by either John Deere Shared Services, Inc. or the claimant, Marvin W. LeRoy. Later in the day on Wednesday, July 31, 2013, the administrative law judge was informed by the Appeals Section that Mr. LeRoy had then called in. The call was forwarded to the administrative law judge who spoke with Mr. LeRoy and made a recording of the call in compliance with administrative regulations. In response to an inquiry about the call, Appeals Section clerk, "Marty," verified that Mr. LeRoy had spoken to him by telephone on July 30, 2013, and that Mr. LeRoy had inquired only as to whether some documentation that he had submitted had been received, and also verified that Mr. LeRoy had not submitted his telephone number during the call.

In compliance with the Board's directive, the Administrative Law judge enters the following findings of fact, reasoning, and conclusions of law.

ISSUE:

The issue is whether the evidence in the record establishes misconduct in connection with the claimant's work, sufficient to deny the receipt of unemployment benefits.

FINDINGS OF FACT:

Having considered the evidence in the record in this matter, the administrative law judge concludes that Marvin W. LeRoy began employment with John Deere Shared Services, Inc. on May 16, 2011. Mr. LeRoy was employed as a full-time engineer for the company and was paid by salary. Mr. LeRoy was discharged from his employment with John Deere Shared Services, Inc. on October 9, 2012 for violation of the company's electronic resources policy. Under the terms of the policy company employees are required to use company electronic resources in a professional manner and only for business purposes or for personal use that is permitted by the company.

Mr. LeRoy was aware of the company policy as it was provided to him at the time of hire. Employees are also reminded of the policy each time that they log in to their computers. Company policy also requires that electronic resources provided by the company be locked at all times when not in use by the employee to prevent access from unauthorized individuals.

Mr. LeRoy was discharged after he returned the company computer that had been assigned to him to the company's IT Department to be checked for viruses and the computer was found to contain a "plethora of inappropriate pornographic websites" that were in violation of the company's policies which limit the use of electronic resources to business purposes or personal use approved by company. The pornography contained in the PC was determined to be not for any business purpose, and in clear violation of the permitted use policy.

The explanations provided by Mr. LeRoy for the large amount of pornography on his company computer were not considered to be credible by the company.

The claimant had not previously informed the company's human resource department or the company's occupational health department of any medications or medical conditions which affected his memory or ability to comply with company policies. The claimant's explanation that his "son" must have accessed the pornography was not accepted because of the company's strict policy that requires the locking of all electronic resources when not in use by the employee. This policy was in place for the specific purpose of preventing unauthorized access of company electronic equipment in periods of non-use by the employee, and compliance was expected.

Based upon the volume of pornography discovered on the PC that had been assigned to Mr. LeRoy and his failure to adhere to the strict policies governing the use of the company's electronic resources, Mr. LeRoy was discharged from his employment with John Deere Shared Services, Inc.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

Iowa Code section 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.

Since the claimant was discharged the employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct serious enough to warrant discharge of an employee may not necessarily be serious enough to warrant a denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

The evidence in the record establishes that Mr. LeRoy was discharged based upon the employer's reasonable conclusion that he had violated a known and strict company policy governing the use of company electronic resources that had been assigned to him.

The evidence establishes that Mr. LeRoy was aware of the policy that allowed company electronic resources to be used only for business purposes or for limited personal use of the type that was permissible to the company. He was also aware of the policy that required the device be locked when not in use by the John Deere employee.

When an examination of the PC assigned to Mr. LeRoy revealed what the employer described as a "plethora of inappropriate pornographic websites," the company concluded that Mr. LeRoy was clearly in violation of the company's strict policies which governed the use of the electronic equipment that had been assigned to him. The employer did not find the claimant's explanations to be credible that someone else had done it or that medications that he was taking made him unable to follow company rules. The claimant had not previously reported to the company's human resource department or to his occupational health department that medications that he was taking affected his judgment or ability to follow company rules as policy required. When questioned, the witness subpoenaed at Mr. LeRoy's request provided no information that supported Mr. Leroy's assertions.

For the reasons stated herein, the administrative law judge concludes that the employer has sustained its burden of proof in establishing that the claimant was discharged under disqualifying conditions. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated November 26, 2012, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs