

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WILLIAM E CORRICK
Claimant

CASEYS MARKETING COMPANY
Employer

APPEAL 21A-UI-08750-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/07/21
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge from Employment

STATEMENT OF THE CASE:

On March 29, 2021, the claimant, William E. Corrick, filed an appeal from the April 13, 2021 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged from employment for violation of a known company rule. The parties were properly notified of the hearing. A telephonic hearing was held at 8:00 a.m. on Friday, June 11, 2021. The claimant, William E. Corrick, participated. The employer, Casey's Marketing Company, participated through Jenny Beatty, Store Manager. Employer's Exhibits 1 through 9 were received and admitted into the record without objection.

ISSUE:

Was the claimant discharged for a current act of disqualifying, job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a second assistant, from September 9, 2013, until March 12, 2021, when he was discharged for sexual harassment.

The final incident leading to the discharge occurred sometime in mid-February. Claimant and coworker Brown had been working together that night when Brown injured her finger in the cooler. When they were standing by their cars after their shift had ended, claimant asked to see Brown's finger. He then told her she would be okay and sucked on her finger.

Brown immediately reported this incident to Beatty. Brown also reported that claimant tried to get into the restroom while she was in there, and she reported that he followed her home on occasion. Beatty then immediately contacted Human Resources, who told her they would handle the investigation. Human Resources told Beatty not to speak to claimant about the incident.

Human Resources commenced its investigation on March 11, 2021. Jeremy from Human Resources spoke with claimant, Brown, and a third employee. Jeremy then contacted Beatty

and told her the results of the investigation and that claimant would be discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not discharged for a current act of misconduct. Benefits are allowed.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

A lapse of 11 days from the final act until discharge when claimant was notified on the fourth day that his conduct was grounds for dismissal did not make the final act a "past act." Where an

employer gives seven days' notice to the employee that it will consider discharging him, the date of that notice is used to measure whether the act complained of is current. *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988). An unpublished decision held informally that two calendar weeks or up to ten work days from the final incident to the discharge may be considered a current act. *Milligan v. Emp't Appeal Bd.*, No. 10-2098 (Iowa Ct. App. filed June 15, 2011).

Here, the final incident that triggered the discharge from employment occurred in mid-February. Claimant was not notified by the employer that his conduct was problematic and potential grounds for dismissal until March 11, weeks later. There is no evidence in the record explaining this weeks-long delay. The administrative law judge finds that claimant was not discharged for a current act of misconduct, and therefore benefits are allowed.

DECISION:

The April 13, 2021 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

A handwritten signature in blue ink, appearing to read "Elizabeth Johnson", is positioned above a horizontal line.

Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

June 25, 2021
Decision Dated and Mailed

lj/ol