

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RANDY F POGGE**  
Claimant

**APPEAL NO. 07A-UI-02712-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JENNIE EDMUNDSON MEMORIAL  
HOSPITAL**  
Employer

**OC: 02/11/07 R: 01  
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated March 9, 2007, reference 02, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on April 3, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Christie Rogge participated in the hearing on behalf of the employer with a witness, Dave Pahl.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a linen distribution worker from March 28, 1977, to February 14, 2007. The claimant was informed and understood that under the employer's work rules, sexual harassment of employees was prohibited.

On February 10, 2007, the claimant was on an elevator with a female employee who worked in the food service department. Both of them had carts on the elevator, and the claimant stood behind the employee in the elevator. When they reached the floor where they were to exit the elevator, the female employee just stood in the door and did not move. The claimant put his hands on the employee's shoulders to guide her out the door. There was no other motivation for his conduct. He told her that he knew the guys in the engineering department gave her a hard time, but as far as he was concerned she was all right. The claimant knew that coworkers kidded with the employee about being short. That is what the comment was about.

The employee reported to management that the claimant had put his arms around her upper body and told her that a lot of guys in the engineering department were going to be flirting with her. The employee felt uncomfortable about the claimant putting his arms around her and the comment he made.

The employer discharged the claimant on February 14, 2007, because management determined the claimant had harassed the food service employee.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 N.W.2d 661, 665 (Iowa 2000).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified in a very credible manner about what had happened. The employer's evidence about what happened in the elevator is uncorroborated hearsay. The claimant's testimony is entitled to greater weight.

No willful and substantial misconduct has been proven in this case. The claimant did not have any contact of a sexual nature with the employee in question and his actions of putting his hands on the employer's shoulders to get her to move or the comment he made cannot be considered disqualifying misconduct.

**DECISION:**

The unemployment insurance decision dated March 9, 2007, reference 02, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs