

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JIMMY M DENTON
Claimant

APPEAL NO: 19A-UI-00473-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CG ACQUISITION CO
Employer

OC: 12/16/18
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 10, 2019, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 1, 2019. The claimant participated in the hearing. Bailey Voss, Human Resources Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time powder technician for CG Acquisition from June 14, 2017 to December 14, 2018. He was discharged after the employer received and investigated a sexual harassment complaint against him December 7, 2018.

A female associate told human resources the claimant “looked her up and down,” calls her “sexy” grabbed her shoulders and tried to give her a massage, called her the “white girl with the pretty face and nice butt,” and was always watching her which made her feel uncomfortable. The employer asked the associate if there were any witnesses and whether she reported it to anyone and the associate stated she told her lead and back-up lead and that there was another female associate who also had issues with the claimant. The employer notified the claimant there was a complaint and sent him home pending further investigation.

The employer spoke to the lead and he said the female associate did report the claimant made her uncomfortable by calling her beautiful and making comments about her butt. The lead said “many other” females on the shift were uncomfortable around the claimant and the lead noticed the claimant watching the female associate “all the time.”

The employer talked to the back-up lead and he stated the female associate reported the claimant called her sexy and made her uncomfortable because the claimant watched her “all the

time.” The back-up lead said he, the lead and another employee informally talked to the claimant and told him he was making female employees uncomfortable and the claimant “just laughed it off.” The back-up lead mentioned the same female associate as a witness/complainant as the first female employee did.

The employer spoke to the other female associate and she indicated the claimant consistently watched her and always stood behind the first female associate who complained. She also stated the claimant said he could “fit nicely into that ass.” She too said the claimant looked women up and down and made many sexual comments.

On April 23, 2018, a female associate said the claimant bumped into her with his privates. The claimant acknowledged bumping into her but denied that he did so with his privates. The employer issued the claimant a written warning and presented its power point presentation on the harassment policy to the claimant again.

After completing the investigation, the employer terminated the claimant’s employment December 14, 2018, for violating its zero tolerance harassment policy. The claimant signed for the policy in the handbook June 14, 2017. The employer also conducted companywide harassment training June 28, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The initial female associate's complaint was substantiated by the lead, back-up lead and another female associate. While the claimant denies the charges, the employer's testimony was credible and persuasive. The claimant's denials do not carry as much weight as the statements of four other independent employees. The claimant's behavior was inappropriate and unprofessional at best.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The January 10, 2019, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn