

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRACY L HOWARD
Claimant

APPEAL NO. 13A-UI-07108-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

OC: 05/19/13
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Tracy Howard, filed an appeal from a decision dated June 10, 2013, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on August 1, 2013. The claimant participated on his own behalf. The employer, Team Staffing, participated by Claims Administrator Sarah Fiedler and On-Site Account Manager Tammy Crawford.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Tracy Howard was employed by Team Staffing from March 28, 2012 until May 22, 2013. He received the anti-harassment policies from both the employer and the client company where he worked, Winegard. Harassment is grounds for immediate discharge.

On May 16, 2013, a co-worker, Megan, asked for a transfer out of the department where she was working. Six days later she made a formal complaint against Mr. Howard for harassment. The matter was referred to On-Site Account Manager Tammy Crawford who investigated the matter immediately with employees of Winegard. Four employees who had worked with Mr. Howard in the past were interviewed. Two of them reported him making comments such as "give me three or four good pumps and swirl and that all I need, you'll be in love with me." To another new employee he said "I would like to nail you to the wall" and to another he said he'd like to "hit it" with her. This made three witnesses who reported hearing such comments.

The claimant was interviewed and denied everything. The employer felt the weight of the evidence was in favor of the complainant and he was discharged by Ms. Crawford the same day.

REASONING AND CONCLUSIONS OF 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.

Customarily hearsay evidence has less weight than first person, eyewitness statements. But in the present case the employer's investigation was immediately after the complaint and the statements reported were very specific. The claimant, on the other hand, had every reason to deny the inappropriate conduct which caused his discharge. The administrative law judge finds the employer's testimony should be given more weight under the circumstances.

The employer has the obligation to provide a safe and harassment-free work environment for all employees and the claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of June 10, 2013, reference 01, is affirmed. Claimant is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs