IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JASON G COTTRELL
Claimant

CENTRO INC
Employer

APPEAL NO. 11A-UI-12194-HT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/31/11
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Jason Cottrell, filed an appeal from a decision dated September 7, 2011, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on October 11, 2011. The claimant participated on his own behalf. The employer, Centro, participated by Human Resources Assistant Tracy Lennon and Corporate Human Resources Leader Rhonda Griffin. Exhibit One was admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

Jason Cottrell was employed by Centro from October 27, 1997 until July 29, 2011 as a full-time product inspector. He had received the employer's handbook along with training on harassment-free workplace policies.

In October 2006 Mr. Cottrell was accused by another employee of sexual harassment. As there were no other witnesses, no disciplinary action was imposed at the conclusion of the investigation, but he did receive one-on-one additional training from Corporate Human Resources Lead Rhonda Griffin on the harassment policy. In January 2011, the claimant was named, along with others, in an EECO complaint by another employee. The complaint was dropped, but Mr. Cottrell was again counseled by Ms. Griffin about the harassment policy. She emphasized that it was not the intent of the action, but the perception of the action by others that constituted harassment.

On July 22, 2011, Jonathan Beltz complained about harassment from Mr. Cottrell. The claimant had "goosed" him with a crow bar and about 30 minutes later, goosed him with a torque wrench. His comment after the second incident was "you didn't jump as high this time." The incident was reported to corporate human resources and an investigation was done on Monday, July 25, 2011. The claimant, Mr. Beltz, and two witnesses were interviewed. Both witnesses confirmed

Mr. Beltz's complaints. The claimant acknowledged goosing Mr. Beltz with the crowbar. At the end of the interviews, the claimant was returned to work and notified the matter would be reviewed further and he would be advised of the employer's decision.

Several members of management discussed the findings. The two witnesses were interviewed twice more by other members of management and their accounts remained unchanged. The claimant was discharged on July 29, 2011, by Ms. Griffin for another violation of the company harassment policy.

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.

The claimant was aware of the employer's harassment policy and received additional training on at least two other occasions after complaints about his conduct. This did not deter him from acting in an inappropriate manner toward other employees. He acknowledged "goosing" Mr. Beltz with the crow bar but maintained, essentially, that "everyone did it." But, he also admitted Mr. Beltz had never done anything of the sort to him, but for reasons which he did not explain, still felt it was okay for him to do such a thing.

The claimant had been advised his job was in jeopardy as a result of his violations of the harassment policy. In spite of the warnings, he continued to act in a rude, insulting, and inappropriate manner toward his co-workers. 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 September 7, 2011, reference 01, is affirmed. Jason Cottrell is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

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Bonny G. Hendricksmeyer
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw