

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KODY J HANSEN

Claimant

APPEAL NO. 12A-UI-06100-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ASSOCIATED MILK PRODUCERS INC

Employer

OC: 04/22/12

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated May 17, 2012, reference 01, which denied unemployment insurance benefits. After due notice was issued, a telephone hearing was held on June 19, 2012. The claimant participated. Participating as a witness was Mr. Noah Hunt, former employee. The employer participated by Ms. Ann Carpenter, human resource manager, and Mr. Harold Peters, plant supervisor.

ISSUE:

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

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Kody Hansen was employed by Associated Milk Producers, Inc. from November 11, 2010, until April 23, 2012, when he was discharged from employment. Mr. Hansen worked as a full-time packaging operator and was paid by the hour. His immediate supervisor was Harold Peters, plant supervisor.

Mr. Hansen was discharged after a fellow employee complained that the claimant had made derogatory statements to the employee concerning the employee's physical appearance and also complained that Mr. Hansen had made derogatory statements with respect to the funeral of an employee's family member by using epitaphs referring to homosexuals and blacks.

Mr. Hansen was aware of the company policy that prohibited employees from making statements that created a hostile work environment. The claimant had been warned about making derogatory comments on June 3, 2011, and on September 6, 2011. The claimant had also been warned about his attitude and warned on numerous occasions verbally by Ann Carpenter, the company's human resource manager. When questioned about the most recent allegation, Mr. Hansen did not deny the allegations but indicated he and the other employee were "joking."

It is the claimant's position that the statements attributed to him never occurred.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

In the case at hand, the evidence in the record establishes that Mr. Hansen had been repeatedly warned in the past about his attitude and his propensity for making derogatory statements to and about other employees. A decision was made to terminate the claimant when another employee complained that Mr. Hansen had made patently derogatory statements about the employee's physical appearance and that the claimant had made derogatory statements about a worker's family member, referring in a negative and inappropriate way to the person's sexual orientation and ethnicity.

When questioned about the allegations, Mr. Hansen did not deny them during the investigation but referred to his comments as only being "jokes."

The administrative law judge concludes that the employer was reasonable in concluding the claimant had violated the previous warnings based upon the complaints from the other worker and the claimant's history of attitude issues and his propensity for making derogatory comments to other employees. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated May 17, 2012, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are denied until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw