

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DARIN D OBERHART**  
Claimant

**APPEAL NO: 08R-UI-11400-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**QUAD CITY OCCUPATIONAL HEALTH LLC**  
Employer

**OC: 06/28/08 R: 04  
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Quad City Occupational Health LLC (employer) appealed a representative's July 29, 2008 decision (reference 01) that concluded Darin D. Oberhart (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known address of record, a telephone hearing was held on December 17, 2008.

Two previous hearings were held in this matter. In the previous hearings, only one party was present. In each case an administrative law judge made a decision that was favorable to the party at the hearing. The party who was not at the hearing appealed the decision to the Employment Appeal Board. On December 17, the third hearing scheduled in this matter, the claimant and John Kivlin, the employer's controller, participated in the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in April 2007. The claimant worked as a full-time clinic administrator and nurse. The claimant received a copy of the employer's sexual harassment policy. The policy gave employees examples of sexual harassment and informed employees they could be discharged if they engaged in sexual harassment.

On or about June 23, 2008, an x-ray technician and a marketing employee told Aaron Braaten, an owner, about comments the claimant made to them in May. Both employees felt the claimant's comments were inappropriate. The x-ray technician reported the claimant made a comment about her under garments, which she did not appreciate. The marketing employee reported the claimant made a comment about her tight ass.

On June 30, 2008, the employer decided to discharge the claimant. The employer told the claimant he was discharged because he was no longer a good fit for the employer. The employer mentioned harassment but did not explain any specifics to the claimant.

The claimant admits he talked to an X-ray technician about her undergarments. The claimant talked to her because she was dressed inappropriately when her red undergarments could be seen under her with white scrub pants. The claimant did not consider the X-ray technician's apparel appropriate and told her this as he would anyone he supervised. The claimant shared an office with the marketing employees and believed they were very good friends. He does not recall making any statement about her buttocks.

After learning about these comments, the employer concluded the claimant sexually harassed these employees and discharged him.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer's witness had no first-hand knowledge about the reasons for the claimant's employment separation. The employer's reliance on unsupported third-hand hearsay information cannot be given as much weight as the claimant's testimony. Also, when it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The claimant's testimony that he told the X-ray technician her undergarments was inappropriate because they showed through her scrub pants was an appropriate remark under the circumstances. The X-ray technician had not dressed appropriately for the pants she wore at work. As the X-ray technician's supervisor; the claimant's decision to talk to her about this does not amount to sexual harassment. The facts do not establish that the claimant sexually harassed the employee who shared an office with him.

The employer's witness had no knowledge the claimant's job was in jeopardy before the employer heard about the above employee complaints concerning incidents that occurred in

May. The employer may have had business reasons for discharging the claimant. The evidence does not establish that the claimant committed work-connected misconduct. As of June 29, 2008, the claimant is qualified to receive benefits.

**DECISION:**

The representative's July 29, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of June 29, 2008, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css