

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

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**Appeal Number: 06A-UI-03558-H2T
OC: 03-05-06 R: 04
Claimant: Respondent (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 17, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 3, 2006. The claimant did not participate. The employer did participate through Angie Johnson, Operation Manager and Turkessa Hill, Benefits Administrator and was represented by Barb Hamilton of TALX UC eXpress.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a team leader full time beginning November 10, 2003 through March 2, 2006, when she was discharged.

The employer has a sexual harassment policy that prohibits supervisors from dating or engaging in romantic relationships with subordinates. All of the employees, including the claimant, were given a copy of the policy and were trained on enforcement of the policy.

On February 14, 2006, the claimant was warned about violation of the employer's sexual harassment policy when it was learned that she engaged in a conversation where she said that one of the supervisors was having an affair with a subordinate. The claimant was told that the gossip she was spreading was not true and that her conduct violated the employer's policy. The claimant was warned that another such violation would or could result in her termination.

On March 2, 2006, the claimant went to Mr. Unterryo Hill, a level one coworker, and told him that his relationship with Donna Guthrie, a supervisor, would result in his discharge if it were discovered by the employer. Mr. Hill went to human resources and complained about the claimant's comment to him, in part, because he was not engaged in a romantic relationship with Ms. Guthrie.

When interviewed by Angie Johnson, the claimant admitted making the comment to Mr. Hill. The claimant also admitted that she knew she was not to gossip about coworkers and their alleged romantic relationships. The claimant admitted that she should have gone to human resources with her concerns and let them investigate.

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:

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant was discharged for violation of the employer's sexual harassment policy. The claimant had received fair warning that the employer was no longer going to tolerate her performance and gossip back in February 2006 when she was given a written warning. The claimant had fair warning that there were changes she needed to make in order to preserve her employment. The claimant's coworker that she was allegedly trying to help actually complained about her spreading untrue rumors about a romantic relationship he was allegedly involved in. The claimant admittedly knew her behavior violated the work rules, but she chose to do so anyway. Substantial misconduct has been established. Benefits are denied.

DECISION:

The March 17, 2006, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

tkh/kkf