

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD M DAMERON
Claimant

APPEAL NO: 13A-UI-10677-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PINERIDGE FARMS LLC
Employer

OC: 07/14/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Richard M. Dameron (claimant) appealed a representative's September 9, 2013 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Pineridge Farms, L.L.C. (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on October 14, 2013. This appeal was consolidated for hearing with one related appeal, 13A-UI-10678-DT. The claimant participated in the hearing. John Anderson appeared on the employer's behalf. 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:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Affirmed. Benefits denied.

FINDINGS OF FACT:

The claimant started working for the employer on December 6, 2012. He worked full time as a box palletizer at the employer's pork processing facility. His last day of work was July 3, 2013. The employer discharged him on that date. The stated reason for the discharge was violation of the employer's anti-violence and anti-harassment policy.

On July 3 a coworker reported to the employer that he could no longer handle the claimant being intimidating against him, calling him vulgar names, and trying to pick fights with him. The claimant was suspended pending investigation and then discharged on July 5. The employer obtained statements from several coworkers who reported that the claimant had harassed them as well, and had confirmed that the claimant had engaged in this behavior toward the employee

who had complained as well. The employer viewed video surveillance of the area on July 3, which showed the claimant engaging in apparently unwanted horseplay against other employees consistent with what they had reported, and showed the complaining employee leaving the area to get away from the claimant when he approached.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant denied that he had engaged in harassment, although couching his denial in that he did not do anything different from what the other employees were doing. While the employer did not have first-hand testimony as to what the claimant may have said or done toward the complaining employee or the other employees, the fact the employer observed on the video surveillance behavior which was consistent with the reports of these other employees is more persuasive than the claimant's general denials. The claimant's harassment toward other employees shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's September 9, 2013 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of July 3, 2013. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs