

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**TEODORO VERGARA**  
Claimant

**WEST LIBERTY FOODS LLC**  
Employer

**APPEAL 22A-UI-00204-CS-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/17/21  
Claimant: Appellant (1)**

Iowa Code §96.5(2)a-Discharge/Misconduct  
Iowa Code §96.5(1)- Voluntary Quit

**STATEMENT OF THE CASE:**

On November 22, 2021, the claimant/appellant filed an appeal from the November 15, 2021, (reference 01) unemployment insurance decision that denied benefits based on claimant being discharged on October 12, 2021, for violation of a known company rule. The parties were properly notified about the hearing. A telephone hearing was held on January 21, 2022. Claimant participated through CTS Language Link Spanish Interpreter Aimee (Identification No. 13502). Employer participated through Human Resources Supervisor, Monica Dyar. James Bryant was present as a witness but was not called to testify. Exhibit 1 was admitted into the record. Administrative notice was taken of claimant's unemployment insurance benefits records.

**ISSUE:**

Was the separation due to job-related misconduct that disqualifies claimant from benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on September 13, 2002. Claimant last worked as a full-time horse supply. Claimant was separated from employment on September 12, 2021, when he was discharged.

On October 8, 2021, employer became aware of a complaint involving the claimant and making inappropriate comments and behaviors to other female co-workers. Employer began an investigation where they interviewed claimant's co-workers. (Exhibit 1, pgs. 9-23). During the investigation the female co-workers reported claimant asked a female co-worker what kind of panties she wore. Claimant was also told a co-worker: "Those pants make your butt look sexy." Co-workers reported claimant would rub their arms after they had asked him not to touch them. Claimant also rubbed a female worker's backed and ran his arm down her back towards her butt. Claimant called female workers "hot mama or sexy mama." Claimant asked a female co-worker to sit on his lap. The claimant denies that any of these things happened.

The employer has a harassment policy that that prohibits conduct that includes, but is not limited to: "sexual flirtations, advances, or propositions. Verbal comments related to an individual's membership in a category such as age, race, gender, color, religion, national origin, disability, sexual orientation, or gender identity. Explicit or degrading verbal comments about another individual or his/her appearance. Any sexually offensive or abusive physical conduct." (Exhibit 1, pg. 7).

On October 23, 2020, claimant had a previous written warning for hitting a female co-worked on the rear. Claimant was put on notice that any further incidents could result in his termination. (Exhibit 1, pg. 1). Claimant was required to attend a harassment prevention training. (Exhibit 1 pg. 2).

After their investigation, the employer terminated claimant on October 12, 2021, for creating a hostile work environment though his violation of the harassment policy.

### **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 employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's version of events to be more credible than the claimant's recollection of those events.

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has presented substantial and credible evidence that claimant violated the harassment policy after having been warned and given additional harassment training. Despite these warnings, claimant continued to engage in similar behavior. This is disqualifying misconduct.

**DECISION:**

The November 15, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



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Carly Smith  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau

February 10, 2022  
Decision Dated and Mailed

cs/kmj

**NOTE TO CLAIMANT:** This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.