

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RONALD W DOWNS**  
Claimant

**APPEAL NO. 14A-UI-10217-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**INFINITY CONTACT INC**  
Employer

**OC: 09/07/14**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated September 24, 2014, reference 02, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on October 21, 2014. Claimant participated. The employer participated by Mr. Shay Libe.

**ISSUE:**

The 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: Ronald Downs was employed by Infinity Contact, Inc. from April 1, 2013 until September 9, 2014 when he was discharged from employment. Mr. Downs was most recently employed as a full-time sales manager and was paid by salary. His immediate supervisor was Steve Hinsley.

Mr. Downs was discharged following an investigation to establish Mr. Downs had failed to follow the company's sexual harassment policies by using "pet" names in reference to a number of female employees that he was working with. The claimant's use of terms such as "baby" and the claimant's repeated statements about his personal feelings toward female employees had caused at least one company employee to come to the company's Human Resource Department to lodge a complaint. Following the complaint, the employer further investigated and determined that the claimant had used personal terms of endearment to numerous female employees and that the claimant had also violated company policy by making numerous reference to the physical attributes of female workers. At least one female worker also reported that the claimant repeated statements of personal affection for her at work and believed that the claimant was attempting to establish a sexual relationship with her.

Mr. Downs had received a copy of the company's sexual harassment policies. Employer believed that based upon the number of statements made by female workers about Mr. Downs' conduct, he had violated the policies. A decision was made to therefore terminate the claimant from his employment.

Mr. Downs agrees that he often used familiar names with female workers because he has known some workers for long periods of time and believed it was a positive method to encourage the best efforts of the employees in their sales endeavors.

### **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 § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

In discharge cases, the employer has the burden of proof. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits.

Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). 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 Ct. of Appeals 1992).

In the case at hand, the evidence establishes that Mr. Downs was aware of the company's policy which prohibited sexual harassment or the creation of an intolerable or detrimental working condition for workers. Although Mr. Downs was aware of the policy and held a supervisory position with the company, the evidence in the record establishes that Mr. Downs violated the policy by repeatedly referring to female workers using pet names, references to their physical attributes and making statements to the female workers suggesting his desire to enter into a physical relationship with the female workers.

Although the administrative law judge is cognizant that Mr. Downs maintains that his activities were innocent and intended to foster motivation in the sales team, the administrative law judge nevertheless concludes the claimant knew or should have known that conduct of this nature in an employment setting was inappropriate and could lead to his termination from employment.

Based upon the information that was supplied to the company by numerous female employees and the similarities of the statements regarding the claimant's conduct made by the various female workers independently, the employer was reasonable in discharging Mr. Downs from his employment.

For the reasons stated herein, the administrative law judge concludes that the employer has sustained its burden of proof in establishing that the claimant's discharge took place under disqualifying conditions. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, and is otherwise eligible.

**DECISION:**

The representative's decision dated September 24, 2014, reference 02, is affirmed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

---

Terence P. Nice  
Administrative Law Judge

---

Decision Dated and Mailed

pjs/pjs