

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SHANE M MCKIM
Claimant

FRIENDSHIP HAVEN INC
Employer

APPEAL 14A-UI-11993-H2T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/26/14
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 13, 2014, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 10, 2014. Claimant participated. Employer participated through Janelle Cravens, Human Resources Clerk Melissa Nanninga, Human Resources Coordinator, and Michelle Jakeman, Director of Nursing. Claimant's Exhibit A was entered and received into the record. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a certified nursing assistant beginning on May 17, 2011 through October 23, 2014 when he was discharged.

The claimant had been warned through multiple means, conversations and warnings that he needed to keep his conversations, and interactions with his coworkers appropriate. Multiple female coworkers complained over a period of years that the claimant was making unwanted advances toward them. The claimant was counseled to keep his conversations professional and work related. The claimant was not allowed to engage in inappropriate conversation with coworkers just because he was off work. During the last week of his employment the claimant sent a snap chat picture of himself in his underwear to a female coworker. He also posted a comment on his public Facebook page about the female coworker's bra color. The coworker complained to management who investigated. The claimant was discharged when the employer found the complaints credible in light of the prior multiple conversations and allegations against him. The claimant had been given a copy of the claimant's employer handbook and knew that creating a hostile work environment could lead to his discharge.

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 § 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).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant had multiple warnings about keeping his actions and comments with coworkers appropriate. The claimant knew or should have known that making a public comment about a coworker's bra color and by snap chatting her a picture of him in his underwear was conduct that was not appropriate and a violation of the employer's handbook or policy manual. The only reason the claimant knew this woman was through work. She found his comments and the picture of him in his underwear unwelcome. The claimant's actions after having been warned previously for similar conduct were sufficient substantial misconduct to disqualify him from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The November 13, 2014 (reference 01) 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs