

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ADAM FOX
Claimant

PMX INDUSTRIES INC
Employer

APPEAL 22A-UI-07956-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/11/21
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the March 24, 2022, (reference 02) unemployment insurance decision that allowed benefits based upon a finding that claimant was discharged with no evidence of misconduct. The parties were properly notified about the hearing. A telephone hearing was held on May 10, 2022. Claimant Adam Fox did not participate. Employer PMX Industries participated through senior director of human resources Brian Bedard. The administrative law judge took official notice of the administrative record.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a slitter operator from June 21, 2021, and was separated from employment on March 2, 2022, when he was discharged.

Employer has a policy that prohibits sexual harassment. The policy is provided to employees at the time of hire. Claimant received a copy of the policy and signed off that he read and understood the policy. Additional harassment training was provided to employees, including claimant, on January 18, 2022.

On February 22, 2022, employer received a complaint from a female employee. The employee stated claimant made unwelcome comments to her throughout the length of his employment. On one occasion he told her that women should not be working, and that his wife stayed home and did not work. The female employee also alleged that claimant called her “whore” on several occasions, both to her face and to other employees. Employer investigated the complaint. Mr.

Bedard first interviewed claimant, who denied the allegations. Mr. Bedard prohibited claimant and any other witness from discussing the investigation with any employee while it was ongoing. Claimant left the interview and immediately told another employee about the investigation. When that employee was interviewed fifteen minutes after claimant left, he told Mr. Bedard he knew why he was there because claimant told him about the investigation. That witness proceeded to use the same phrases claimant used during his interview and denied hearing claimant using harassing language. A second witness corroborated the complainant's allegations.

Employer terminated claimant's employment for violating its sexual harassment policy and for violating the prohibition against speaking about the investigation.

The administrative record reflects that claimant filed an initial claim for benefits with an effective date of April 11, 2021. He reopened the claim effective February 27, 2022. Claimant has not received any unemployment benefits since reopening the claim. Employer did not participate in the fact-finding interview because it did not receive notice until after the interview date.

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).

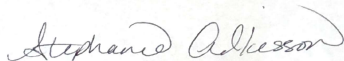
The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

Claimant was discharged for both his conduct which violated the employer's harassment policy and for his obstruction of the investigation by speaking to other employees about it. An employee has the right to work in an environment free from unwanted and hurtful comments. Claimant's actions were a deliberate violation or disregard of standards of behavior employer had a right to expect of claimant. The administrative law judge is persuaded the claimant knew or should have known his conduct was contrary to the best interests of the employer. Based on the evidence presented, the claimant was discharged for misconduct, even without prior warning. Benefits are denied.

Because claimant did not receive any benefits, the issues of overpayment of regular unemployment insurance benefits and relief of charges are moot.

DECISION:

The March 24, 2022, (reference 02) unemployment insurance decision is reversed. 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. The issues of overpayment of regular unemployment insurance benefits and relief of charges are moot.



Stephanie Adkisson
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June 1, 2022
Decision Dated and Mailed

sa/kmj