

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JASON V MARLETTE
Claimant

CAMBREX CHARLES CITY INC
Employer

APPEAL 21A-UI-07482-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/24/21
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the March 4, 2021 (reference 01) unemployment insurance decision that denied unemployment insurance benefits to the claimant based upon the claimant's separation from employment. The parties were properly notified of the hearing. A telephone hearing was held on May 24, 2021. The claimant participated personally. The employer participated through witnesses Brittany Sickels and Scott Kendall. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUE:

Was the claimant discharged for disqualifying job-related 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 pharma 1 lead operator. He began his employment on April 6, 2005. Tricia Adams was one of his direct supervisors. He was discharged from employment on January 21, 2021.

The employer has a written policy prohibiting harassment and unwelcome touching in the workplace. The claimant was aware of the policy. The policy provides that an employee may be discharged from employment for violation of the policy.

On January 10, 2021, an employee reported to the claimant problems that they were having with Ms. Adams and stated that they were going to leave for the day. The claimant went into Ms. Adams' office in order to speak with her about the problem. Ms. Adams started yelling at the claimant for coming into the control room to speak to her. She stated that she was upset that she did not know what the other employee was doing for their daily job duties. Both Ms. Adams and the claimant used raised tones of voices during their conversation. Ms. Adams stated that no one listens to her and no one likes her.

Ms. Adams asked the claimant what it is that she does that no one likes her. The claimant stated to Ms. Adams that a lot of it is the way you talk and a lot of it is the touching that you do.

Claimant stated that the employees do not like the physical touching you do because you touch the employee's shoulders or you pull on their arms in order to get an employee's attention. Claimant touched Ms. Adams with a tap on the shoulder three times in order to demonstrate the type of touching she engages in with employees that they do not like. Claimant only did this in response to Ms. Adams asking him what she does that other employees do not like. No threats of violence were made. Ms. Adams asked claimant to stop touching her on the shoulder and claimant stopped. Claimant had no discipline during the course of his employment with the employer. Claimant was discharged from employment for violation of the employer's anti-harassment and code of conduct policies.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of

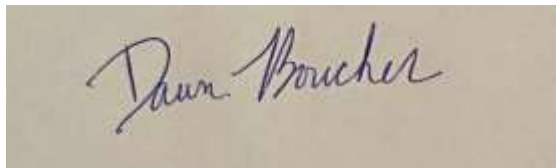
misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof in establishing disqualifying job-related 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

Claimant was demonstrating to Ms. Adams what type of touching she was engaging in that was upsetting her subordinate employees. He did this in response to Ms. Adams asking him what she was doing wrong to lose respect from her subordinates. There was no threat of violence and claimant only engaged in this conduct after being asked by Ms. Adams what she was doing wrong. The final incident is not considered substantial job-related misconduct but is an isolated incident of poor judgment. Claimant is guilty of no more than "good faith errors in judgment." 871 IAC 24.32(1)(a). Instances of poor judgment are not misconduct. *Richers v. Iowa Dept. of Job Services*, 479 N.W.2d 308 (Iowa 1991); *Kelly v. IDJS*, 386 N.W.2d 552, 555 (Iowa App. 1986). As such, benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The March 4, 2021 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant remains otherwise eligible.

A handwritten signature in blue ink that reads "Dawn Boucher". The signature is written in a cursive, flowing style.

Dawn Boucher
Administrative Law Judge

June 02, 2021
Decision Dated and Mailed