

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT J MAPES
Claimant

APPEAL NO. 12A-UI-12629-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KOHL'S DEPARTMENT STORES INC
Employer

**OC: 09/16/12
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 10, 2012, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 20, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Amy Boswell participated in the hearing on behalf of the employer. Exhibits One through Three were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as an associate and area supervisor from February 3, 2011, to September 14, 2012.

The claimant was working on September 7. One of his job responsibilities was to clean out the fitting rooms, including the women's fitting rooms.

The claimant entered the woman's fitting room and took some merchandise out. When he re-entered the fitting room, a woman was blocking the door. When the claimant asked the woman if he could help her, she responded that her 14-year-old daughter was changing and how did she know he was not in the fitting room to molest her. The claimant explained that he was the only associate covering the clothing department and part of his job was to keep the fitting room clean and merchandise returned.

The woman then told the claimant that before he entered the fitting room, he should knock and make his presence know. The claimant left the fitting room. When he returned, he knocked and said that there was a gentleman entering the fitting room. The woman again complained about his being in the women's fitting room so he grabbed some merchandise and left the room.

A short time later, the claimant was asked to staff the service desk while the assistant store manager took her lunch break. When he approached the service desk, the female customer from the fitting was there to complain to a manager and was upset when she learned he was the person at the service desk. She started accusing him again of intending to molest her daughter, so the claimant replied truthfully that he was gay and had no interest in her daughter. This further upset the customer so the claimant had the assistant manager talk to her.

A few days later, the customer wrote a letter of complaint to corporate management. The claimant was discharged on September 14, 2012, for his conduct toward the customer.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe the claimant's testimony that he only raised his voice when he announced he was coming into the fitting room to make sure he was heard. I would have been more prudent of him to have called someone else immediately to deal with the customer at the service desk, but that was an error in judgment not willful and substantial misconduct.

DECISION:

The unemployment insurance decision dated October 10, 2012, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css