

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**MARK A WILKINSON**  
Claimant

**FURNITURE MART USA INC**  
Employer

**APPEAL 21R-UI-23975-AR-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/04/21**  
**Claimant: Appellant (2)**

---

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

**STATEMENT OF THE CASE:**

The claimant, Mark A. Wilkinson, filed an appeal from the June 16, 2021, (reference 01) unemployment insurance decision that denied benefits based on the determination that the employer, Furniture Mart USA, Inc., discharged claimant for conduct not in the employer's best interests. Notice issued for a telephone hearing, which was held August 4, 2021. The claimant participated personally. The employer participated through witnesses Pam Koob, Christi Pease, and Tom Cagley. A decision denying benefits was issued on August 9, 2021.

Claimant appealed to the Employment Appeal Board (EAB). On October 29, 2021, the EAB remanded the matter to the Appeals Bureau to develop the record further. The EAB did not reverse the August 9, 2021, decision at the time of remand. Upon remand, due notice issued and a hearing was held on December 16, 2021. Claimant participated. The employer did not participate. The administrative law judge denied claimant's request for subpoena of various videos and documents on the record based on Iowa Admin. Code r. 871—26.13.

**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: The claimant was employed full-time as a store manager beginning on October 5, 2020, and was separated from employment on March 4, 2021, when he was discharged.

In February 2021, the employer received reports that claimant had engaged in conduct that violated its sexual harassment policy. In response, Pease initiated an investigation into the allegations. While that investigation was ongoing, on March 1, 2021, Pease received an email complaint from another employee in the store where claimant worked. This employee alleged that claimant had again engaged in conduct that violated the employer's sexual harassment policy. Pease was not able to speak with the employee until March 2, 2021. Pease also reviewed the stores surveillance video footage and determined that the report was supported by the video footage. Pease and Koob determined that claimant's employment would be

terminated. On March 4, 2021, Cagley informed claimant that his employment was being terminated due to violation of the employer's sexual harassment policy. Claimant adamantly denies violating the employer's sexual harassment policy at any time.

Claimant never received notice that he was being investigated for violation of the employer's sexual harassment policy. He was not interviewed as part of the investigation, nor was he allowed to view the evidence on which the employer based its conclusions. The only thing claimant was told about the allegations was that he was seen on camera grabbing another employee's crotch. Claimant denies doing so. Claimant also denies ever being approached by anyone at the employer, whether supervisor or subordinate, and being informed that he was making anyone feel uncomfortable. Claimant theorizes that the accuser had a vendetta against him because of various past interactions regarding work and the accuser's desire for promotion in the company.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

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).

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). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Though the employer provided credible testimony at the original hearing regarding its investigation and conclusions, because it did not participate in the hearing on remand, it did not provide additional information regarding the nature of the accusations against claimant. Claimant credibly testified that he was never informed that he was making anyone uncomfortable or violating an employer policy. He was not even informed that he was being investigated for such allegations. Claimant vehemently denies engaging in the conduct for which he was terminated. Absent additional evidence or testimony from the employer, the administrative law judge concludes that the employer has not carried its burden of establishing that claimant engaged in disqualifying misconduct. Accordingly, no disqualification is imposed, and benefits are allowed, provided claimant is otherwise eligible.

**DECISION:**

The June 16, 2021, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.



---

Alexis D. Rowe  
Administrative Law Judge

January 12, 2022  
Decision Dated and Mailed

ar/scn