IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MATTHEW W HARMON
Claimant

DAVID EASTMAN
WINDSOR WINDOW COMPANY
Employer

APPEAL NO: 12A-UI-10479-ST

ADMINISTRATIVE LAW JUDGE
NUNC PRO TUNC DECISION

OC: 07/22/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated August 23, 2012, reference 01, that held he was discharged for misconduct on July 19, 2012, and which denied benefits. A telephone hearing was held on September 26, 2012. The claimant participated. Pete Crivaro, HR divisional manager, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began full-time employment on November 2003, and last worked for the employer as a full-time group leader on July 13, 2012. The employer issued claimant a written warning with a suspension for a racist comment he made to a co-worker on January 16, 2012. Claimant made a comment to a co-worker using the word “nigger.” Claimant was warned that a further incident could result in discharge.

Two temporary employees reported to their agency about some sexual comments claimant made to them, and the agency forwarded it to the employer. One employee issued a written statement that claimant told him on July 6 he could suck his dick, and the other employee statement is claimant told him he could give him a blow job on July 10. The employer suspended claimant on July 13 based on the complaint for further investigation.

When claimant was confronted about the complaint, HR representative Mullaney noted he made the statement about giving him a blow job. The employer discharged claimant for making sexual comments to employees in light of the prior warning/suspension. Claimant admits the statement about the blow job, but denies the other complaint.

Claimant had received the employer policy in a handbook. The policy prohibits sexual harassment and racist comments at the work place.

REASONING AND CONCLUSIONS OF LAW:

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.

The administrative law judge concludes the employer has established that the claimant was suspended on July 13, and discharged for misconduct in connection with employment on July 18, 2012, for a repeated violation of the company harassment policy by using inappropriate language.

The claimant knew the employer policy due to a prior warning and suspension, and his repeated violation for the same type of offense constitutes job disqualifying misconduct. Claimant's admission in this hearing about a reference to a blow job to an employee adds credibility to the report about the "suck his dick" comment, which is sexual harassment. Claimant had been warned and suspended for a racist comment and knew he could be terminated for such language.

DECISION:

The department decision dated August 23, 2012, reference 01, is affirmed. The claimant was discharged for misconduct on July 18, 2012. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Randy L. Stephenson
Administrative Law Judge

_____
Decision Dated and Mailed

rls/kjw