

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DONALD J SICKLER**  
Claimant

**APPEAL NO. 08A-UI-00506-HT**

**ADMINISTRATIVE LAW JUDGE  
AMENDED DECISION**

**NORCROSS SAFETY PRODUCTS LLC**  
Employer

**OC: 12/16/07 R: 04  
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge  
Section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The employer, Norcross Safety Products LLC (Norcross), filed an appeal from a decision dated January 7, 2008, reference 01. The decision allowed benefits to the claimant, Donald Sickler. After due notice was issued, a hearing was held by telephone conference call on January 30, 2008. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Human Resources Generalist Lena Marxen and was represented by Unemployment Services in the person of Kellen Anderson. Exhibits One and Two were admitted into the record.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Donald Sickler was employed by Norcross from July 17, 2000 until December 19, 2007, as a full-time warehouse worker and driver. At the time of hire, he received training on the employer's policies and procedures, including the sexual harassment policy.

The claimant had received counseling beginning in September 2000 about inappropriate and offensive comments in the work place. Throughout the course of his employment, he continued to receive warnings for the same thing, including a three-day suspension in July 2001 with other warnings continuing through July 2006.

On December 17 and 18, 2007, two employees brought complaints to Human Resources Generalist Lena Marxen about comments made by the claimant over a period of time. Apparently these employees had been aware of the claimant's comments for some time but finally had decided they had "had enough." He referred to one employee as "juice boy" in reference to a rumor that person had been masturbating in a truck, and asked someone if he wanted to "drive a Peterbilt," making it a sexual reference. Comments were made about women

such as “look at that nice round ass,” “I’d love to tear that up,” and “I’d like to bend you over and give it to you.”

Ms. Marxen investigated to extensively interviewing both of the complainants and consulting with the human resources manager. His disciplinary history was reviewed and the decision was made to discharge him. Ms. Marxen notified him on December 19, 2007, of the discharge, at which time he neither admitted nor denied the allegations.

Donald Sickler has received unemployment benefits since filing a claim with an effective date of December 16, 2007.

#### **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 claimant had been advised his job was in jeopardy as a result of his continuing inappropriate comments and harassment of other employees. He did not take the warning to heart and continued to make comments of an inappropriate nature that other employees found embarrassing and unacceptable. The record establishes the claimant intentionally and blatantly ignored the prior warnings and violated the company policy regarding harassment. The employer has the obligation to provide a safe and harassment-free work environment for all

employees and the claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The representative's decision of January 7, 2008, reference 01, is reversed. Donald Sickler is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$1,209.00.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw