

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICK H BROWN
Claimant

APPEAL NO: 13A-UI-01440-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

TPI IOWA LLC
Employer

OC: 05/06/12
Claimant: Appellant (2)

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 January 30, 2013, reference 02, that held she was discharged for misconduct on January 7, 2013, and benefits are denied. A telephone hearing was held on March 5, 2013. The claimant participated. Danielle Williams, HR Coordinator, 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 witness testimony and having considered the evidence in the record, finds: The claimant began employment on May 21, 2012, and last worked for the employer as a full-time production worker on January 7, 2013. Claimant received the employer policy that includes a provision regarding a zero tolerance for sexual harassment.

Female co-workers complained to the employer that claimant had acted inappropriately toward them on January 4, 2013. One female complained claimant patted her on the behind. The other complained claimant made a comment that contained a sexual innuendo.

The employer investigated the complaints, and it questioned claimant. He did not admit patting a female worker on the behind though he might have had inadvertent bumping or touching with a work tool. He denies any inappropriate comment.

The employer suspended claimant on January 4, and discharged him January 7, 2013 for a zero tolerance sexual harassment violation.

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 failed to establish claimant was discharged for misconduct in connection with employment on January 7, 2013.

The employer failed to offer hearing witnesses and/or written statements in support of the sexual harassment allegations claimant denies. While the employer might be protecting employer witness confidentiality, it has failed to establish job disqualifying misconduct.

DECISION:

The department decision dated January 30, 2013, reference 02, is reversed. The claimant was not discharged for misconduct on January 7, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs