

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TODD A LEWIS
Claimant

MIDAMERICAN ENERGY COMPANY
Employer

APPEAL 24A-UI-05980-PT-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/02/24
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant, Todd Lewis, filed an appeal from a decision of a representative dated June 19, 2024, (reference 01) that held the claimant ineligible for unemployment insurance benefits after a separation from employment. After due notice, a telephone hearing was held on July 12, 2024. The claimant participated personally. The employer, MidAmerican Energy Company, participated through Human Resources Business Partner Brad DeBoer. The employer's Exhibits 1 through 3 were admitted into evidence. The administrative law judge took official notice of the administrative record.

ISSUE:

Was the claimant discharged for disqualifying, job-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant began working as a full-time supervisor of service operations at MidAmerican Energy Company on June 6, 2008. The claimant was separated from employment on May 28, 2024, when he was discharged.

As a supervisor of service operations, the claimant was responsible for scheduling and supervising line-crews, ensuring the crews abide by safety rules and perform their jobs correctly, communicating with customers, and maintaining the service center. The employer has a written employee manual that includes a code of conduct policy and a policy prohibiting unlawful and unwelcome harassment, sexual or otherwise. The policy warns employees that they will be discharged if they violate the anti-harassment policy. The claimant received copies of, and was annually trained on, the employer's work rules and policies.

On May 21 and May 22, 2024, there were multiple large storms in the claimant's region that left many customers without power. The claimant worked through the night of May 21 restoring power to as many customers as possible and only took an approximately 3 hour break before returning back to work on May 22, 2024.

Early in the afternoon on May 22, 2024, the claimant was sitting at his desk, which faces the desk of the administrative assistant, who is a female employee whom the claimant supervised.

The claimant and the administrative assistant were the only two employees in the office. The claimant was feeling dazed from working so many hours and, while sitting at his desk, he was staring directly at the administrative assistant. The administrative assistant asked the claimant if he was okay and the claimant responded, "Yes, I just want to make out with you." When the administrative assistant responded, "What?" The claimant said something to the effect of, "I want to go to the bathroom and make out with you." After making these statements, the claimant apologized several times and then left the building and sat in his truck for approximately ten minutes before driving away.

After the claimant left, the administrative assistant called the employer's human resources department and reported the incident. While on the phone, an HR representative questioned the administrative assistant about what had occurred and then drafted a statement detailing her account.

The next day, May 23, 2024, the HR representative met with the claimant and questioned him about the incident. The claimant acknowledged having made an inappropriate comment about wanting to kiss the administrative assistant. However, he told the HR representative that he could not recall precisely what he had said because he had been dazed from working so many hours prior to making the remarks. The claimant also acknowledged that he had repeatedly apologized to the administrative assistant and said that he knew that he had made a serious mistake. The employer then suspended the claimant pending the outcome of the investigation. After completing its investigation, on May 28, 2024, the employer called and informed the claimant that his employment was being terminated effective immediately due to violations of the employer's code of conduct and harassment policies.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

Iowa Code sections 96.5(2)(a) and (d) provide:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

...

d. For the purposes of this subsection, "*misconduct*" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

...

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

Iowa Admin. Code r. 871-24.32(4) provides:

(4) *Report required.* The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r. 871-24.32(8) provides:

(8) *Past acts of misconduct.* While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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). 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. 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. Disqualification for a single misconduct incident must be a deliberate violation or disregard of standards of behavior which the employer has a right to expect. *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432 (Iowa Ct. App. 1991).

Every employer is entitled to expect civility and decency from its employees, and an employee's "use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct." *Henecke v. Iowa Dep't of Job Serv.*, 533 N.W.2d 573, 576 (Iowa App. 1995). Use of foul language can alone be a sufficient ground for a misconduct disqualification for unemployment benefits. *Warrell v. Iowa Dept. of Job Service*, 356 N.W.2d 587 (Iowa Ct. App. 1984).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find the employer's testimony concerning the investigation, the claimant's awareness of the work rules, and the interview that took place between the claimant and human resources to be more thorough and consistent with other believable evidence. Moreover, although the claimant was the only witness who testified who had direct, first-hand knowledge of his interaction with the administrative assistant, the claimant acknowledged that he could not recall precisely what he had said and the employer's testimony was based on a detailed written statement provided by the administrative assistant shortly after the incident occurred. For this reason, the administrative law judge has given greater weight to the employer's version of events than to the claimant's version of events.

The employer has presented substantial and credible evidence that on May 22, 2024, the claimant intentionally made inappropriate, sexual remarks to a subordinate employee. A supervisor is responsible both for following the employer's policies and for enforcing those policies. That supervisor loses credibility when they choose to selectively ignore the policies they are charged with enforcing. The claimant's actions were in deliberate disregard to his obligations to the employer. The employer has established that it discharged the claimant for disqualifying, job-related misconduct. Benefits are withheld.

DECISION:

The June 19, 2024, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to disqualifying, job-related misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount after the May 28, 2024, separation date and provided the claimant is otherwise eligible.

A handwritten signature in cursive script, appearing to read "Patrick B. Thomas".

Patrick B. Thomas
Administrative Law Judge

July 22 2024
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.