

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DOMINGO PUENTE
Claimant

ROSE ACRE FARMS
Employer

APPEAL 22A-UI-05247-JD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/30/22
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

STATEMENT OF THE CASE:

On March 1, 2022, the claimant filed an appeal from the February 22, 2022, (reference 01) unemployment insurance decision that denied benefits based on a determination that the claimant was discharged for disqualifying misconduct. The parties were properly notified about the hearing. A telephone hearing was held on April 7, 2022. Claimant Domingo Puente participated and testified through CTS Language Link Spanish Interpreter #14649. Employer participated through Rachel Claycamp, Vice President Personnel. No exhibits were submitted and not additional witnesses testified. Official notice was taken of the administrative record.

ISSUE:

Was the claimant discharged from employment for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Claimant began working for employer on August 3, 2021. Claimant last worked as a full-time laborer. Claimant was separated from employment on January 31, 2022, when he was discharged for violating the company's sexual harassment policy. The employer testified that in January 2022, the employer was conducting a training on its sexual harassment policy when an employee informed her supervisor that the claimant had stared at her inappropriately and made some suggestive comments towards her. This employee stated that she told the claimant to stop and he did. She went to state that several other employees had similar interactions with the claimant. The employer spoke with the other two employees and after gathering and reviewing their statements the employer discharged the claimant for violating the company's sexual harassment policy. The claimant stated he was never inappropriate with any of his co-workers, that he was the only male that worked in that area, and that his co-workers did not want him to be working back in that area with them.

REASONING AND CONCLUSIONS OF LAW:

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.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 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

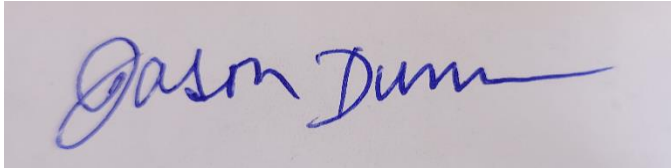
of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. Iowa Dep't Human Servs.*, 461 N.W.2d 603, 607 (Iowa Ct. App. 1990). Both the quality and the quantity of the evidence must be evaluated to see whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code § 17A.14 (1). In making the evaluation, the fact-finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. *Schmitz*, 461 N.W.2d at 608. The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976).

The decision in this case rests, at least in part, upon the credibility of the parties. The employer did not present a witness with direct knowledge of the situation. No request to continue the hearing was made and no written statement of the individual was offered. Given the serious nature of the proceeding and the employer's allegations resulting in claimant's discharge from employment, the employer's nearly complete reliance on hearsay statements is unsettling. Nor did the employer bother to submit a copy of the policy at issue. Accusing someone of sexual misconduct is a grave and serious matter. The employer did not provide any direct evidence in the form of testimony from any of the complaining individuals. The employer stated it is not their policy to provide that sort of testimony given the nature of the complaints yet had no issue submitting signed written statements from the employees for the fact-finding interview. The claimant's testimony while lengthy was credible and the employer did not provide anyone with first-hand knowledge to refute the claimant's position. The employer failed to meet its burden in proving job disqualifying misconduct and benefits are allowed.

DECISION:

The February 22, 2022, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Jason Dunn
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

April 14, 2022
Decision Dated and Mailed

jd/mh