

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LYNDON E CHESTNUT**  
Claimant

**APPEAL NO: 14A-UI-03315-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TPI IOWA LLC**  
Employer

**OC: 03/17/13**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Lyndon E. Chestnut (claimant) appealed a representative's March 19, 2014 decision (reference 04) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with TPI Iowa, L.L. C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 17, 2014. The claimant participated in the hearing. Danielle Williams appeared on the employer's behalf. During the hearing, Employer's Exhibits One, Two, and Three were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**OUTCOME:**

Reversed. Benefits allowed.

**FINDINGS OF FACT:**

The claimant started working for the employer on August 21, 2013. He worked full time as a production worker. His last day of work was February 10, 2014. The employer discharged him on that date. The reason asserted for the discharge was harassment and unprofessional conduct.

On February 10 the claimant and a coworker were speaking to each other and made reference to a team lead, who overheard her name used but did not hear what was said. She expressed concern to other management that the employees had been speaking about her. The employer brought in the other employee, who said that the claimant had been talking about the team lead and yet another coworker; the employer provided hearsay testimony that the claimant reportedly said, "They ride together, they sleep together, they lick each other . . ." In the claimant's sworn testimony at hearing he acknowledged commenting that the two rode together, and he

acknowledged that he had voiced a question that he “wondered if they were sleeping together,” but denied that it went any further beyond that. Because the employer concluded that the claimant had made a sexually harassing statement, it determined to discharge the claimant.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is that he had made a sexually harassing statement. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant in fact made the statement which could be more clearly considered to be sexually harassing. While generally questioning whether two other employees might be sleeping together might not be the best example of professionalism and good conduct, under the circumstances of this case, the claimant's making of that established statement was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's March 19, 2014 decision (reference 04) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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