

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFREY L ROORDA
Claimant

APPEAL NO. 12A-UI-07002-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABF FREIGHT SYSTEMS INC
Employer

**OC: 02/26/12
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, ABF, filed an appeal from a decision dated June 4, 2012, reference 02. The decision allowed benefits to the claimant, Jeffrey Roorda. After due notice was issued a hearing was held by telephone conference call on July 24, 2012. The claimant participated on his own behalf. The employer participated by Branch Manager Jim Deckard and Operations Supervisor Mark Hackett. Exhibit One was 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:

Jeffrey Roorda was employed by ABF from October 8, 2006 until May 2, 2012 as a full-time utility driver. At the time of hire he attended a training session on the sexual harassment policy which was explained in detail and he also received a document to study further. Any employee who is found to have committed sexual harassment is subject to discharge.

On May 2, 2012, Ellen Thornton, an employee of the terminal in Moline, Illinois, complained of sexual harassment by him. The matter was reported to her supervisor who then had her write up a statement. The statement was forwarded to the Industrial Relations Department Director, John Barker. The complaint specified Mr. Roorda had asked her if she was a “hooker” and also touched her between the legs from behind with the deck hook. When questioned later that day by Operations Supervisor Mark Hackett and Branch manager Jim Deckard the claimant admitted to these actions but stated they were intended to be a joke.

Jeffrey Roorda filed an additional claim for benefits with an effective date of April 29, 2012. The records of Iowa Workforce Development indicate no benefits have been paid since that date.

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 was aware of the employer's sexual harassment policy but violated it without any good cause by asking a co-worker if she was a hooker and using the instrument to touch her inappropriately. 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.

DECISION:

The representative's decision of June 4, 2012, reference 02, is reversed. Jeffrey Roorda is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs