

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EFREN CREMA

Claimant

WINNEBAGO INDUSTRIES

Employer

APPEAL NO: 13A-UI-13594-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/17/13

Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 5, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 6, 2014. The claimant participated in the hearing. Gary McCarthy, Personnel Supervisor, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time assembler for Winnebago Industries from October 22, 2012 to November 14, 2013. He was discharged for violating the employer's sexual and physical harassment policies.

The claimant worked third shift and his hours were 10:00 p.m. to 7:00 a.m. Other employees reported the claimant had been "messing around" all evening, tossing boards on the floor and "sneaking up" on co-worker Robert Gilliland while Mr. Gilliland was running the hand shaper and the claimant tossed a board (Employer's Exhibit One). Mr. Gilliland asked him to stop behaving in that manner. Later, Mr. Gilliland went to the Optimizer machine to ask co-worker Stephen Lieverouw a question. The claimant followed Mr. Gilliland over to where Mr. Lieverouw was and then asked Mr. Gilliland to touch his private area for a "hand full of change" (Employer's Exhibit One). Mr. Gilliland refused and Mr. Lieverouw told the employer during the investigation the claimant stated he would give Mr. Gilliland "eighty cents to touch his dick" (Employer's Exhibit One). Mr. Gilliland again refused. The claimant then held his hand out with change in it for Mr. Gilliland to take for soda and when Mr. Gilliland reached for it the claimant grabbed Mr. Gilliland's other hand and pulled it in toward him, touching the claimant's crotch. Mr. Gilliland reported the situation to the employer and after conducting an investigation the claimant's employment was terminated November 14, 2013.

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.

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.

While the claimant stated the men often joked around in that manner, his testimony was not particularly credible, as evidenced by the complaints the employer received regarding his conduct toward Mr. Gilliland November 13, 2013. It was neither appropriate nor acceptable behavior for the claimant to tell Mr. Gilliland he would give him 80 cents to touch his penis or to grab Mr. Gilliland's hand and shove it into the claimant's crotch, and was in fact offensive and could have been viewed as an assault. The employer did not discriminate against the claimant because of his nationality; it simply reacted reasonably to the claimant's outrageous behavior toward a co-worker.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The December 5, 2013, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css