

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY S TROUT
Claimant

APPEAL NO. 09A-UI-06753-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEXAS ROADHOUSE HOLDINGS LLC
Employer

**Original Claim: 04/05/09
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Texas Roadhouse Holdings LLC (employer) appealed a representative's April 23, 2009 decision (reference 01) that concluded Timothy S. Trout (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for non-disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 28, 2009. The claimant participated in the hearing with his witness, Mary Trout. The employer did not respond to the hearing notice and did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in August 2008. The claimant worked as a full-time fry cook. The employer has a sexual harassment policy, but did not tell the claimant about this policy.

On March 23, 2009, the claimant made a comment to a female co-worker. Although the co-worker did not say anything to the claimant or act upset, she reported his comment to management. At the end of the day, management asked the claimant if he said, "You almost backed into my wood." The claimant admitted he had made the comment. The employer then informed the claimant he was discharged for making this remark. The claimant had not received any previous warnings and the employer had not previously talked to him about sexual comments at work.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The facts indicate the employer had business reasons for discharging the claimant. While the claimant's comment was inappropriate, the evidence shows that he did not intentionally violate the employer's sexual harassment policy. The claimant did not even know what this policy stated. The facts do not establish that the claimant committed work-connected misconduct. Therefore, as of April 5, 2009, the claimant is qualified to receive benefits.

DECISION:

The representative's April 23, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the evidence does not establish that he committed work-connected misconduct. As of April 5, 2009, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw