

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL D PAULUS
Claimant

APPEAL NO. 09A-UI-16801-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KOHL'S DEPARTMENT STORES INC
Employer

OC: 10/19/09
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Michael Paulus filed an appeal from a representative's decision dated November 3, 2009, reference 01, which denied benefits based on his separation from Kohl's Department Stores, Inc. (Kohl's). After due notice was issued, a hearing was held by telephone on December 14, 2009. Mr. Paulus participated personally. The employer participated by Brian Iverson, Store Manager, and John O'Brien, Assistant Operations Manager.

ISSUE:

At issue in this matter is whether Mr. Paulus was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Paulus was employed by Kohl's from November 27, 2007 until August 8, 2009. He was last employed as a housekeeping specialist and worked approximately 15 hours each week. He was discharged based on an allegation of harassment.

On July 21, 2009, a female freight associate reported that Mr. Paulus was harassing her. She put her complaint in writing on July 23. The employer did not discuss the issue with Mr. Paulus until August 5. At that time, he denied the bulk of the allegations against him. He did acknowledge telling the associate that she had a nice-shaped butt and making an inappropriate hand gesture towards her. He continued to work until notified of his discharge on August 8, 2009. The above matter was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer's burden included establishing that the discharge was based on a current act of misconduct. 871 IAC 24.32(8). In the case at hand, the conduct that

triggered Mr. Paulus' discharge came to the employer's attention on July 21. The matter was not discussed with him until two weeks later on August 5.

The employer delayed discharging Mr. Paulus for two weeks after the freight associate first complained. However, the discharge occurred only three days after Mr. Paulus acknowledged telling the associate that she had a nice-shaped butt and making an inappropriate gesture towards her. His acknowledgement constituted at least a portion of the basis for the discharge. As such, it was a final act within the meaning of 871 IAC 24.32(8). It is concluded, therefore, that the discharge was prompted by a current act of misconduct.

Mr. Paulus knew or should have known that making suggestive comments or gestures was inappropriate in the workplace. In addition to the conduct he admitted to the employer, he testified that he had commented to the associate that her "cups runneth over" in reference to her breast size. His conduct had the potential of subjecting the employer to legal action. For the reasons cited herein, the administrative law judge concludes that disqualifying misconduct has been established and benefits are denied.

DECISION:

The representative's decision dated November 3, 2009, reference 01, is hereby affirmed. Mr. Paulus was discharged by Kohl's for misconduct in connection with his employment. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css