

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ZACHARY J WEBER
Claimant

CASEY'S MARKETING CO
Employer

APPEAL 15A-UI-02658-L-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/01/15
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from the February 18, 2015, (reference 01) unemployment insurance decision that allowed benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on May 4, 2015. Claimant participated. Employer participated through manager, Ken Johnson and area supervisor, Bo Knop. UI Coordinator Alisha Weber participated on the fact-finding participation issue. The administrative law judge took official notice of the administrative record, including fact-finding documents.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time as an overnight worker from December 2, 2014, and was separated from employment on February 6, 2015, when he was discharged for allegedly falsifying his job application. When claimant was interviewed and hired, Johnson had to sign a document indicating he knew claimant was on the sexual abuse registry and spoke with claimant's probation officer about his status on December 17, 2014. His original application was turned into the corporate office and lost so Knop had him fill out a second job application on January 30. He submitted a job application and checked the "Yes" box to the question of whether he had "ever been convicted of a crime." Below that he checked the "Misdemeanor" box and provided details about the circumstances, specifying he was "charged with assault w/sexual intent." (Employer's Exhibit 2) Court records show he was charged pursuant to Iowa Code § 709.11(C), assault with intent to commit sexual abuse, an aggravated misdemeanor and Iowa Code § 709.4(2)(c)4, sexual abuse in the third degree, a class C felony. He pleaded to and was sentenced on the misdemeanor charge but not the felony. (Employer's Exhibit 3)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

709.11 ASSAULT WITH INTENT TO COMMIT SEXUAL ABUSE.

Any person who commits an assault, as defined in section 708.1, with the intent to commit sexual abuse is guilty of a class "C" felony if the person thereby causes serious injury to any person and guilty of a class "D" felony if the person thereby causes any person a bodily injury other than a serious injury. The person is guilty of an aggravated misdemeanor if no injury results.

709.4 SEXUAL ABUSE IN THE THIRD DEGREE.

A person commits sexual abuse in the third degree when the person performs a sex act under any of the following circumstances:

2. The act is between persons who are not at the time cohabiting as husband and wife and if any of the following are true:

c. The other person is fourteen or fifteen years of age and any of the following are true:

(4) The person is four or more years older than the other person.

. . .

Sexual abuse in the third degree is a class "C" felony.

The employer has not met the burden of proof to establish that claimant misrepresented his criminal background in his interview or on either of his two job applications. A criminal charge is not the same as a conviction. No disqualifying job-related misconduct is established.

DECISION:

The February 18, 2015, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css