

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER G JACKSON
Claimant

APPEAL NO: 14A-UI-03536-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAREER SYSTEMS DEVLEOPMENT CORP
Employer

**OC: 03/09/14
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated March 28, 2014 reference 01 that held he was discharged for misconduct on January 27, 2014, and benefits are denied. A telephone hearing was held on April 23, 2014. The claimant participated. Mark Douglas, Center Director, Helena Parks, HR Manager, and Ligya Valencia, Representative, participated for the employer. Employer Exhibits 1 - 3 were received as evidence.

ISSUE:

Whether claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on September 16, 2013, and last worked for the employer as a full-time security manager on January 27, 2014. Claimant received the employer policy on harassment and sexual harassment. The policy provides an employee is to report any observation of harassment to the HR manager or Center director. It is a major offense for failure to report knowledge of another employee's action that could constitute a conflict of business interest. A first offense is punishable by behavior modification letter agreement, and second offense termination.

A safety officer reported to claimant about a month before termination a concern involving harassment involving two security officers. Claimant did not report it to HR or the Center director. The female officer involved in the sexual harassment made a report on January 19, 2014 and claimant received it on January 20. Claimant e-mailed the report to HR and it investigated.

The employer terminated claimant on January 27 for failing to timely report the sexual harassment issue. It considered this incident to be serious to warrant a discharge because the harassment had escalated from the initial safety officer report to the security officer report.

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 administrative law judge concludes employer failure to establish claimant was discharged for misconduct on January 27, 2014 for violation of the major offense policy.

The employer major offense relied upon by the employer does not state claimant is required to report harassment or sexual harassment to the employer. The policy states the requirement but it is not specifically stated as a major offense for failing to do so.

In addition, the major offense listed by the employer states a first offense is a written behavior modification letter agreement and second offense is termination. There is no evidence claimant had a prior offense. The employer major offense policy does not square with the failure to report harassment policy to put an employee on notice that a violation might result in termination.

Claimant did not advise the employer of the initial safety officer report because the victim of the harassment asked he not do so. Since claimant did not witness any incident and there was no direct written report from either of the two security officers it would be reasonable to refrain from pursuing the matter further. Job disqualifying misconduct is not established.

DECISION:

The department decision dated March 28, 2014, reference 01, is reversed. The claimant was not discharged for misconduct on January 27, 2014. Benefits are allowed, provided claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs