

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEVEN N SKINNER
Claimant

MENARD INC
Employer

APPEAL 18A-UI-11385-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/21/18
Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the November 15, 2018 (reference 01) unemployment insurance decision that allowed benefits based upon a determination that claimant was discharged and the employer failed to establish the discharge was for willful or deliberate misconduct. The parties were properly notified of the hearing. A telephonic hearing was held on December 7, 2018. The claimant, Steven N. Skinner, did not register a telephone number at which to be reached and did not participate in the hearing. The employer, Menard, Inc., participated through witnesses Kevin Plym, Second Assistant General Manager; and Samantha Bolton, Full-Time Cabinets and Appliance Team Member. Employer's Exhibits 1 through 7 were received and admitted into the record without objection. The administrative law judge took official notice of the administrative record.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time, most recently as a receiving department stocker, from April 13, 2017, until October 24, 2018, when he was discharged for violation of the Non-Harassment Policy. On October 23, claimant came up behind team member Samantha and hugged her against her wishes. The employer learned about this when Samantha brought it to the employer's attention. Once the employer received this complaint, Plym conducted an investigation. He took employee statements and reviewed footage of the alleged incident. (Exhibits 4 through 7) Based on the results of the investigation, including numerous additional complaints of claimant making unwanted physical contact with team members, the employer determined claimant should be discharged. Claimant had previously been counseled twice about his behavior at

work, specifically his inappropriate touching of other team members. Claimant was made aware that his job was in jeopardy because of his conduct.

The administrative record reflects that claimant has not received unemployment benefits since filing a claim with an effective date of November 15, 2018, for the one week ending October 27, 2018. The administrative record also establishes that the employer did participate in the fact-finding interview or make a first-hand witness available for rebuttal. Assistant General Manager Brad Sik participated in the fact-finding interview on behalf of the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld.

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). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a

“wrongful intent” to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer’s interests. *Henry v. Iowa Dep’t of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. In this case, the employer presented substantial and credible evidence that claimant sexually harassed a co-worker by coming up behind her and pulling her into a close hug against her wishes. Claimant had been warned about this type of conduct in the past, and he was aware his job was in jeopardy for this type of conduct. The employer has met its burden of proving claimant was discharged due to disqualifying, job-related misconduct. Benefits are withheld. As claimant has not received any unemployment insurance benefits since opening his claim for benefits, the issues of overpayment, repayment, and chargeability are moot.

DECISION:

The November 15, 2018 (reference 01) unemployment insurance decision is reversed. 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. The issues of overpayment, repayment, and chargeability are moot.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn