

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICKY A SIMONS**  
Claimant

**APPEAL NO. 11A-UI-10896-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS ENTERPRISES INC**  
Employer

**OC: 07-17-11  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the August 10, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 12, 2011. The claimant did participate. The employer did participate through Mark McCarty, Human Resources Business Partner and was represented by Tom Kuiper of TALX UC eXpress.

**ISSUE:**

Was the claimant discharged due to job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a material management supply hauler full time beginning January 21, 1991 through June 3, 2011 when he was discharged. The claimant repeatedly violated the employer's policy against sexual harassment in the workplace. Over the years three separate women complained about the claimant touching or grabbing them, making sexual comments to them or staring at them. One of the women was so frustrated with his behavior that she quit working for the employer rather than continue to endure the claimant's harassment.

In January and February 2011 Donna, the employee who cleaned the break room, told the claimant to keep his hands to himself and to stop touching her in any way. The claimant thought it was funny to attempt to give Donna a "birthday spanking." The claimant also grabbed her by the ankles which another male employee witnessed. He admits that he did tickle her ear or neck but denies that he tickled her under her breasts. On June 1 the claimant approached Donna in the break room, pulled her shirt back from her chest and commented on her sunburn. Donna told the claimant again to stop touching her. Donna reported the incident to another male work Dale, and then went to management to file a formal complaint. When the claimant was interviewed about the event he admitted that he had touched her shirt, but said it was only at the neckline. The claimant had been given a final written warning on August 25, 2010 and told that he faced discharge after other allegations of sexual harassment were investigated by the employer and determined to be founded. The claimant knew that he was not to be touching

any other employee despite his thought that it was “just joking.” The claimant had been trained on the policy and knew that he had no business touching any other employees.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant had been warned repeatedly about touching other employees and had been given a final written warning for the same behavior that led to his eventual discharge. The claimant repeatedly violated the employer's policy against sexually harassment and sexually harassed at least three other female coworkers over a period of years. The claimant's repeated failure to refrain from sexual harassment after having been repeatedly warned not to do so is evidence conduct not in the employer's best interest to such a degree of recurrence as to rise to the level of disqualifying job related misconduct. Benefits are denied.

**DECISION:**

The August 10, 2011 (reference 01) decision is affirmed. The 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.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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