

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JULIO E PEREZ**  
Claimant

**APPEAL NO: 14A-UI-11303-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EXEL INC**  
Employer

**OC: 09/28/14**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's October 22, 2014 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated at the December 9 hearing. Brian Smith, the general manager, testified on the employer's behalf. Jose Varga was also present on the employer's behalf. Ike Rocha interpreted the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in June 2001. He worked as a full-time warehouse associate. The employer's harassment policy does not allow employees to engage in visual gestures or verbal comments that create a hostile work environment or to make sexually suggestive comments at work. The claimant acknowledged he understood this policy in late February 2014.

Prior to September 20, 2014, the claimant's job was not in jeopardy. On September 20, a female employee reported the claimant was sexually harassing and had been sexually harassing her for three months. The employee had not reported any problems earlier because she thought he would stop and she did not want to make this an issue.

The employer investigated the employee's allegations. Some employees supported the female employee's report. The claimant denied the employee's allegations. Some employees supported the claimant's version of what happened.

On September 29, the employer discharged the claimant. Based on statements from several employees, the employer concluded the claimant violated the employer's harassment policy and discharged him.

The claimant established a claim for benefits during the week of September 28, 2014. He has filed weekly claims and received weekly benefits since September 28, 2014. The employer participated at the fact-finding interview.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

When the employer talked to the claimant about the female employee's allegation, he denied it. At the hearing, the claimant explained how she had harassed him. The claimant had not given this information to the employer when they investigated. The claimant's testimony is credible. The evidence shows he is a long-time employee and his job was not in jeopardy before the female complained. There were no prior complaints about him. The employer relied upon hearsay information at the hearing, statement from employees who did not participate at the hearing and none of the statements were offered as evidence. The claimant's testimony must be given more weight than the employer's reliance on hearsay information. When the employee who made the complaint and none of the employees who verified her complaint testified, the employer prevented the administrative law judge from making a decision on the same quality of information the employer had when he decided to discharge the claimant.

Based on the evidence presented at the hearing, the employer did not establish that the claimant sexually harassed a female co-worker. The claimant did not commit work-connected misconduct. As of September 28, 2014, the claimant is qualified to receive benefits.

**DECISION:**

The representative's October 22, 2014 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of September 28, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs