

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT E HARRIS
Claimant

APPEAL NO. 12A-UI-13173-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICOLD LOGISTICS LLC
Employer

OC: 10/07/12
Claimant: Respondent (2R)

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

The employer, Americold, filed an appeal from a decision dated October 23, 2012, reference 01. The decision allowed benefits to the claimant, Robert Harris. After due notice was issued, a hearing was held by telephone conference call on December 7, 2012. The claimant participated on his own behalf. The employer participated by Operations Managers David Campbell and Patrick English.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Robert Harris was employed by Americold from September 26, 2011 until September 25, 2012 as a full-time warehouse fork truck operator. At the time of hire he received a copy of the employer's harassment policy which is zero tolerance.

On August 1, 2012, he received a written warning for a verbal altercation with another employee. He was using "bad language" which, according to the employer's standards, did not rise to the level of harassment.

On September 24, 2012, Operations Manager David Campbell received a complaint through the supervisor, Anthony, from a female employee who reported Mr. Harris had been harassing and threatening her. An investigation was done by interviewing the complainant, two other witnesses and Mr. Harris. The claimant had called his co-worker a "fucking bitch" and continued to refer to her as a "bitch" throughout the shift. In the break room he had stabbed a soda pop can repeatedly with a fork and told the female co-worker, "I wish this was you."

Mr. Harris admitted to making the statements and stabbing the pop can, but declared it was "joke." Neither the female co-worker nor the two other witnesses perceived it as a joke. The claimant was discharged by Mr. Campbell on September 25, 2012.

Robert Harris has received unemployment benefits since filing a claim with an effective date of October 7, 2012.

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 claimant had been advised his job was in jeopardy as a result of his use of inappropriate language to co-workers in violation of the zero-tolerance harassment policy. In spite of the warning he was again verbally harassing a female employee on September 24, 2012. The claimant has asserted it was all a joke but the administrative law judge does not find this to be credible. If it was a joke then there would have been no cause for a complaint to be filed against him.

Mr. Harris claimed harassment from Mr. Campbell and even filed a grievance through the union which was determined to be unfounded. The only other allegations of harassment were investigations of other complaints against Mr. Harris and the warning given on August 1, 2012. The judge does not find sufficient support for allegations of harassment by the employer.

The record establishes the claimant was discharged for verbal harassment and threatening conduct toward a co-worker. The employer has the obligation to provide a safe and harassment-free work environment for all employees and the claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of October 23, 2012, reference 01, is reversed. Robert Harris is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css