

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARIN D OBERHART
Claimant

APPEAL NO. 08A-UI-07176-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QUAD CITY OCCUPATIONAL HEALTH LLC
Employer

OC: 06/29/08 R: 04
Claimant: Respondent (2/R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Quad City Occupational Health, L.L.C. (employer) appealed a representative's July 29, 2008 decision (reference 01) that concluded Darin D. Oberhart (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 25, 2008. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Aaron Braaten appeared on the employer's behalf and presented testimony from one other witness, John Kivlin. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on or about April 30, 2008. He worked full time as administrator at the employer's occupational medicine clinic. His last day of work was June 30, 2008. The employer discharged him on that date. The reason for the discharge was inappropriate conduct including eroding office morale through harassment.

The employer had been receiving some complaints from clients regarding the claimant's attitude in the clinic. There had also been increasing concern regarding a lack of control over the clinic's expenses. As a result, the employer's governing body had begun to more closely scrutinize the claimant and the clinic's operation. On June 20, Mr. Braaten, the employer's president came to the clinic at approximately noon. The claimant was there that day until about noon, at which point he was leaving for vacation from which he was to return on June 30. Shortly after the claimant left, and office staff person told Mr. Braaten about an incident that had occurred just before the claimant left in which he engaged in a discussion with a female temporary staff

person regarding stripping and in which the claimant had gotten out a \$10.00 bill as a suggestion that he would pay for the staff person to demonstrate stripping.

Upon hearing this report, Mr. Braaten began speaking with other female staff persons in the clinic. Several of them described incidents in which the claimant made suggestive comments about their undergarments or bodies, had grabbed their buttocks, or had come up behind them and trapped them in a "hug." In May of 2007 the employer had given the claimant a verbal warning regarding his making of a suggestive comment to a neighboring employer's employee. Given the employer's other concerns about the claimant's handling of the clinic's operation, capped by the information regarding the claimant's conduct toward the staff in the clinic, when the claimant returned from vacation on June 30 the employer advised the claimant that it had decided to part ways with him.

The claimant established a claim for unemployment insurance benefits effective June 29, 2008. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$1,460.00.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's conduct toward the clinic employees shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits

on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's July 29, 2008 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of June 30, 2008. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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