

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RODNEY C MUSICH**  
Claimant

**APPEAL NO. 16A-UI-08380-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PANAMA TRANSFER INC**  
Employer

**OC: 07/10/16  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Rodney Musich (claimant) appealed a representative's July 28, 2016, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Panama Transfer (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 19, 2016. The claimant participated personally. The employer participated by Josh Schmitz, Safety Director.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 29, 2015, as a full-time shop mechanic. The claimant signed for receipt of the employer's handbook on June 15, 2015 before she started work. The handbook prohibits sexual harassment. The claimant received sexual harassment training on June 15, 2015. On February 15, 2016, the employer issued the claimant a written warning for failure to follow instructions. The claimant was placed on a two-week probation.

On July 12, 2016, the claimant said to a female co-worker, "You and your old lady could get here on a day when no one is here and close the wash bay doors pull a truck in make it steamy in here and make a movie. But the kicker is only you two can watch it." The co-worker complained that the comment made her feel uncomfortable. This was not the first comment he made to her of a sexual nature. The employer investigated. The claimant admitted making the remarks. On July 13, 2016, the employer terminated the claimant for sexually harassing a co-worker.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for 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.

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).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

**DECISION:**

The representative's July 28, 2016, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs