

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAN L DEVRIES**  
Claimant

**APPEAL NO. 13A-UI-07918-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**STAPLES CONTRACT AND COMMERCIAL**  
Employer

**OC: 06/09/13**  
**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Dan DeVries, filed an appeal from a decision dated June 28, 2013, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on August 13, 2013. The claimant participated on his own behalf and with Connie Lenz. The employer, Staples Contract and Commercial (Staples), participated by Human Resources Manager Cindy Sketch.

**ISSUE:**

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

**FINDINGS OF FACT:**

Dan DeVries was employed by Staples from August 5, 2008 until May 10, 2013 as a full-time utility worker. He received the employee handbook which states harassment is grounds for discharge.

On April 30, 2012, the claimant received a first and final warning for inappropriate and derogatory remarks to and about female co-workers. In late April 2013 a female employee resigned and in the exit interview stated one of the reasons for leaving was Mr. DeVries' continued sexual remarks and behavior.

An investigation was done and the employer determined an incident as late as April 28, 2013, when the claimant had made remarks about his female workers' dress, bodies, shoes, and once stated he would like to "bend Ashley over the table." The claimant was discharged by Human Resources Barb Drake on May 10, 2013.

The claimant did admit he continued to make sexual jokes and comments in response to another female co-worker's similar remarks. This woman was never reported by Mr. DeVries to management about making inappropriate remarks, but he simply engaged in similar remarks in return.

## 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 inappropriate sexual remarks. In spite of this he continued this behavior because he seemed to think it was welcome by one particular woman. Apparently he did not think in terms of his remarks being overheard by others who would take offense at them.

If he wished to respond to the one coworker's remarks, that would have been better to have taken place outside the workplace on his own time. 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.

**DECISION:**

The representative's decision of June 28, 2013, reference 01, is affirmed. Dan DeVries is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

---

Bonny G. Hendricksmeier  
Administrative Law Judge

---

Decision Dated and Mailed

bgh/pjs