

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WILLIAM F CHAMBERS**  
Claimant

**APPEAL NO. 14A-UI-02038-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DIAL SILVERCREST CORP**  
Employer

**OC: 01/26/14**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

William Chambers filed a timely appeal from the February 13, 2014, reference 02, decision that disqualified him for benefits. After due notice was issued, a hearing was held on April 30, 2014. Mr. Chambers participated. Paige Dilla initially represented the employer, but then was replaced by Kaylan Hamerlink. Ms. Hamerlink and Scott Maiers testified on behalf of the employer. Exhibits One through Eleven, A and B were received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: William Chambers was employed by Dial Silvercrest Corporation, d/b/a Legacy Senior Living Community in Iowa City, as a full-time “ambassador” from June 2013 until January 28, 2014, when Kaylan Hamerlink, Executive Director, discharged him from the employment for sexually harassing multiple female coworkers. The employer has a written sexual harassment policy. The employer provided the policy to Mr. Chambers at the start of his employment and he was aware of the policy. During the employment, Mr. Chambers repeatedly violated the employer’s sexual harassment policy by making relentless unwelcomed sexual advances to several female employees. Mr. Chambers sent sexually explicit text messages to female coworkers both when he was on-duty and off-duty. Mr. Chambers frequently masturbated at work and told female coworkers of this conduct. On or about January 13, 2014, Mr. Chambers pushed a female coworker onto the bed in an empty room and asked her for sex.

Mr. Chambers’ conduct came to the attention of Ms. Hamerlink on January 27, 2014, when employee Beth Burnett came to Ms. Hamerlink to complain about Mr. Chambers. Ms. Burnett had just transferred to an ambassador position a couple weeks earlier. At the time Ms. Burnett spoke with Ms. Hamerlink, Ms. Burnett told Ms. Hamerlink that on her first day as an ambassador, Mr. Chambers had showed her the model room. Ms. Burnett reported that Mr. Chambers had pushed her down onto the bed in model room and had asked her for sex. At the time Ms. Burnett spoke to Ms. Hamerlink, she reported that also on her first day as an ambassador, Mr. Chambers had shown her the storage room and at that time asked her for a

sexual favor. Ms. Burnett further reported to Ms. Hamerlink that Mr. Chambers has sent pictures of his penis to her personal cell phone and had asked her if she wanted to see him "shoot his load." Ms. Burnett further reported that Mr. Chambers had told her that he masturbated at work in the men's bathroom and in the model room.

Immediately following the report from Ms. Burnett, Ms. Hamerlink interviewed three additional female employees separately. Housekeeper Brittany Roetman told Ms. Hamerlink that Mr. Chambers discussed sex all of the time and asked her personal questions about her sex life. Ms. Roetman reported that Mr. Chambers told the housekeepers that he masturbates in the bathroom and in the model room. Ms. Roetman told Ms. Hamerlink that Mr. Chambers knew she did not like such conversations. Ms. Roetman told Ms. Hamerlink that Mr. Chambers directed sexual comments at the 16-year-old girls working in the facility's kitchen. Housekeeper Donna Palmersheim reported to Ms. Hamerlink that Mr. Chambers had sent text messages to her asking "if we'll get together." Ms. Palmersheim indicated that Mr. Chambers had made many sexual remarks about her body and that Mr. Chambers "comes on strong" despite her indications that she would not have sex with him. Ms. Palmersheim told Ms. Hamerlink that Mr. Chambers had sent her pictures of himself and had told the housekeeping staff that he masturbates at work. Ms. Palmersheim told Ms. Hamerlink that Mr. Chambers had "come onto" the 16-year-old girl working in the facility's kitchen. Housekeeper Marty Tvedt reported to Ms. Hamerlink that she had found what she believed to be semen on the mirror in the men's bathroom. Ms. Tvedt reported that Mr. Chambers greets the women in the workplace with "hey baby." Ms. Tvedt reported that Mr. Chambers had told the housekeepers that he masturbates in the building.

On January 27, the employer notified Mr. Chambers not to appear for his shift that evening, but to appear for a meeting the following morning. On January 28, Ms. Hamerlink and Scott Maiers, Community Relations Director, met with Mr. Chambers. Ms. Hamerlink told Mr. Chambers that an employee had come forward with allegations that Mr. Chambers had violated the employer's sexual harassment policy, that Ms. Hamerlink had conducted an investigation and that Ms. Hamerlink had reason to believe that Mr. Chambers had indeed violated the sexual harassment policy. Ms. Hamerlink did not tell Mr. Chambers what the specific allegations had been. Mr. Chambers denied the allegation that he had violated the sexual harassment policy. Mr. Chambers said that he had proof, but could not provide it to her. The employer escorted Mr. Chambers from the workplace at that time.

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

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 this matter. See Iowa Code § 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

The administrative law judge notes that Mr. Chambers conduct came to the attention of Ms. Hamerlink on January 27, 2014 and that Mr. Chambers was discharged the next day. During the hearing, there was testimony that Ms. Burnett had gone to another supervisor a couple weeks prior and made a statement to the effect that Mr. Chambers was trying to be a ladies' man. That prior report would in no way be sufficient to put the employer on notice of Mr. Chambers' specific conduct. The evidence indicates that the employer only became aware of the specific conduct on January 27, 2014. In other words, the evidence indicates a discharge based on current acts.

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The employer elected not to have the female coworkers testify at the hearing. The employer instead presented unsworn written statements from the female coworkers. The employer presented testimony from Ms. Hamerlink, the person to whom the complainant took her complaint and the person who interviewed at least four female employees who provided information about Mr. Chambers' conduct. The reports that the several employees gave to Ms. Hamerlink bear remarkable similarities on key points and those similarities bolster the reliability of the individual statements. The administrative law judge finds no reason to conclude

that the female coworkers colluded to fabricate stories about Mr. Chambers. Nor does the administrative law judge find any reason to conclude that Ms. Hamerlink fabricated her notes concerning her interviews of the female coworkers.

The evidence in the record establishes that Mr. Chambers did indeed engage in misconduct in connection with the employment by violating the employer's sexual harassment policy on many occasions. Mr. Chambers engaged in a persistent pattern of making unsolicited and unwelcome sexual advances to female coworkers. Mr. Chambers points to a history of text messages as a basis for asserting that any sexual comments were mutual. What the text messages indicate instead is a number of women having to fend off a man behaving like an animal in rut. Mr. Chambers' conduct went beyond explicit comments, text messages, and photos. On one or more occasions, Mr. Chambers engaged in unwelcome physical contact with a female worker in an effort to engage in sexual contact in the workplace. That fact that Mr. Chambers and one of his victims might have been scheduled to work together after the worst of Mr. Chambers' advances is in no way exculpatory. The evidence is also sufficient to establish that Mr. Chambers masturbated in the workplace and advertised the conduct when speaking to female coworkers. It appears that Mr. Chambers used the workplace as his sexual hunting ground as much as his source of employment. The employer correctly concluded that Mr. Chambers posed a threat to the workplace. While the hearing addressed the threat to female employees, it bears mentioning that Mr. Chambers' workplace was a retirement community.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Chambers was discharged for misconduct. Accordingly, Mr. Chambers is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

**DECISION:**

The claims deputy's February 13, 2014, reference 02, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account shall not be charged for benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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