

reported an incident involving Monica Christensen, respiratory therapist, after claimant commented to her that her bra must be pink with lace, and wondered aloud about whether she had matching panties. Claimant told employer he did not recall a comment about her panties.

On February 2, 2005, employer warned claimant about previous incidents involving Karen Dwyer, a subordinate, who reported claimant had taken her by the shoulders, pulled her hair back, turned her towards another employee and said she used to be "eye candy." On another occasion he had grabbed her by the pelvis and pulled her towards him. Susan Brunes, CEO, DON, and claimant's supervisor, reported he had also hugged Pam Bell and then made reference to the size of her breasts. There had also been verbal counselings on each of the past three years' performance evaluations about inappropriate actions, attitudes and comments towards female employees. He did not write comments on the evaluations in response to the evaluation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The U.S. Supreme Court has held that a cause of action for sexual harassment may be predicated on two types of harassment: (1) Harassment that involves the conditioning of concrete employment benefits on sexual favors, and (2) harassment that, while not affecting economic benefits, creates a hostile or offensive working environment. Meritor Savings Bank v. Vinson, 477 U.S. 57, 62 (1986).

Whether or not claimant was on the clock, he conducted himself in an inappropriate manner towards female employees while on the work premises. His protestations that the February 2005 incident was colored by his wife's recent death does not minimize the fact that he had been counseled for his remarks and conduct towards female employees in three annual performance reviews prior to that.

DECISION:

The October 7, 2005, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

dml/kjf