

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON ALBEE

Claimant

APPEAL NO. 11A-UI-04251-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GARNETT PLACE INC

Employer

OC: 03/06/11

Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jason Albee (claimant) appealed a representative's March 31, 2011 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Garnett Place (employer) for violating a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 26, 2011. The claimant participated personally. The employer participated by Lilly Lattimer, Assistant Manager; Lee Thoma, Health Care Coordinator/Registered Nurse; and J.P. Culinary Coordinator. The employer offered and Exhibit One was received into evidence.

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 November 26, 2010, as a part-time dining service aide. The claimant signed for receipt of the employer's handbook on November 30, 2010. The employer issued the claimant warnings on December 5 and 30, 2010 for touching two different female coworkers. The employer notified the claimant that further infractions could result in termination from employment.

On March 8, 2011, a third female coworker complained that the claimant poked her in the side near the band of her bra after the coworker told the claimant not to do so. The employer terminated the claimant on March 8, 2011.

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.

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 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). The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. He intentionally touched female coworkers in an inappropriate manner. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

DECISION:

The representative's March 31, 2011 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.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs