

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HARLAN JOHNSON**  
Claimant

**APPEAL NO: 17A-UI-00946-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RAINING ROSE INC**  
Employer

**OC: 01/01/17  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the January 20, 2017, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 16, 2017. The claimant participated in the hearing. Nikki Voss, Human Resources Generalist, participated in the hearing on behalf of the employer. Employer's Exhibits 1 through 5 were admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time warehouse coordinator for Raining Rose from July 30, 2007 to December 29, 2016. He was discharged for using inappropriate language after being warned.

On December 21, 2016, the claimant was working with co-worker Justin and as they were getting ready to leave for the day the claimant asked Justin how his eight month old daughter was. Justine stated she was fine and the claimant said, "Let me give you some parenting advice. If she starts screaming you spank that little bitch." Justin was upset about the claimant's comment and reported the incident to human resources which conducted an investigation consisting of taking Justin's statement, checking for any other witnesses of which there were none, and speaking to the claimant who denied making that comment. In determining who was telling the truth about the situation, the employer concluded the statement was consistent with the claimant inappropriate language and behavior in the past and Justin did not have anything to gain by fabricating his account of the incident. On December 29, 2016, the employer terminated the claimant's employment (Employer's Exhibit 4).

On December 15, 2015, the employer issued the claimant a documented verbal warning after he had a verbal altercation with another employee and threw a metal bar in the air (Employer's Exhibit 1). The claimant denied throwing the metal bar but stated he and his co-worker were

arguing and he got up to go toward the co-worker and knocked the metal bar off the counter and onto the floor.

On April 15, 2016, the claimant received a documented verbal warning after he waited outside the restroom for another employee and then told that employee he needed to use the restroom air freshener that was locked in a cabinet and showed him where the key was (Employer's Exhibit 2). He also told that employee that if he was going to use the air freshener he needed to buy a can (Employer's Exhibit 2). The other employee was very embarrassed by the conversation.

On October 18, 2016, the claimant received a final written warning after telling a female co-worker he "wouldn't mind seeing you have a bigger butt" (Employer's Exhibit 3). The claimant stated he made the comment because the female co-worker was difficult to see when he was on a fork truck (Employer's Exhibit 3).

### **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 § 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 proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

While the claimant argues he did not make the offensive statement December 21, 2016, the fact that he received three previous warnings for inappropriate comments and behavior in just over one year lends credence to Justin's telling of the event. The claimant demonstrated a pattern of inappropriate statements and behavior, whether commenting about disciplining Justin's eight month old daughter, arguing with a co-worker, confronting a co-worker about his use of the restroom, or commenting on a female co-worker's backside.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

**DECISION:**

The January 20, 2017, 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.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/rvs