

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRLYN J DRAGER

Claimant

APPEAL NO: 15A-UI-04158-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMEDY INTELLIGENT STAFFING INC

Employer

OC: 04/13/14

Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 27, 2015, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 14, 2015. The claimant participated in the hearing. Katie Parpart, Staffing Consultant, participated in the hearing on behalf of the employer.

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 production worker for Remedy Intelligent Staffing last assigned to Proctor and Gamble Oral Care (Oral B) from May 26, 2014 to February 17, 2015. He was discharged for using profanity, making sexual jokes, and racial remarks.

On February 17, 2015, the employer received two complaints from co-workers of the claimant (Ashley and Rachel) stating he had made inappropriate sexual and racial statements to them. The claimant told Ashley he was going to “swab her mouth with his dick” and repeatedly touched her and asked her to go out with him despite the fact she told him she was not interested. The claimant then started saying “fucking (n-word)” and “fucking Mexicans.” Ashley and Rachel told the claimant to stop making those comments. The claimant returned to work as did Ashley and Rachel but the claimant repeatedly returned to where the two women were working and made sexual comments. He put his legs up on a piece of equipment and said they could “see what I’m packing” while pointing to his crotch. He also tried to touch Ashley but she became angry and told him not to touch her or anyone else. The claimant then started working by Rachel but the claimant was harassing Rachel by trying to hug her and making comments of a sexual nature to her so Ashley switched places with Rachel. The women then complained to the line lead at break and then the employer’s on-site manager. The line lead then removed the claimant from the department and sent him to the employer’s office.

The employer reviewed the witnesses' statements and made the decision the claimant could not return to the assignment at Oral B. Due to the claimant's profanity and use of sexual remarks and racial slurs the employer determined it could not place him with any of its other clients either and terminated the claimant's employment February 17, 2015.

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 of 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 denies the witness' accounts of his actions and language February 17, 2015, and asserts the only questionable comment he made occurred when he repeated a Richard Pryor joke, the employer's witness statements were quite specific in stating the claimant made additional sexual remarks and racial slurs and his actions made them very uncomfortable.

The claimant signed an Expectation for Associates on Assignment at Proctor and Gamble on May 27, 2014. That document addressed employees' conduct on the job site and states, "Harassment will not be tolerated." The claimant knew, or should have known, that his conduct was at best ill-advised and at worst profane, racist and sexist. His actions were unprofessional and inappropriate and the employer cannot be expected to accept or allow that kind of behavior in the workplace.

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 March 27, 2015, reference 02, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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