

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES B TIRRELL
Claimant

APPEAL NO. 12A-UI-04840-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICOLD LOGISTICS LLC
Employer

OC: 03/25/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 17, 2012, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on May 18, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Lori Walker participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a lift operator from May 4, 2009, to March 26, 2012. He was informed and understood that under the employer's work rules, comments of a sexual nature and having unwanted physical contact with an employer was prohibited.

The claimant and a female temporary employee were flirting with each other during work hours. This included making comments of a sexual nature. In mid-March, the claimant had asked her to go home with him and had touched her buttocks and lifted her shirt. The female employee complained to a manager. During the investigation, the claimant stated everything was mutual and reciprocated and that he and the female employee had exchanged numbers and spoke on and off the worksite. During the investigation, the female employee admitted to flirting with the claimant but said the claimant had asked her at work to go home with him and had grabbed her butt, thighs, and breasts. Other employees corroborated that the claimant had sexual conversations at work and had physical contact with the female employee.

The employer discharged the claimant on March 26, 2012, for violating the sexual harassment policy.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. Even based on the claimant's own testimony and his statements during the investigation, I would conclude he committed work-connected misconduct. Comments of a sexual nature have no place in the workplace, even if they are mutual. Other employees heard these comments, which were inappropriate. I am convinced that the claimant did touch the female employee. One of the most credible statements was by Ryan Schmidt. Schmidt emphasized that what occurred, besides the claimant lifting the female coworker's shirt, was mutual and that he had heard sexual talk between the two of them.

The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated April 17, 2012, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css