

FINDINGS OF FACT:

The claimant started working for the employer on June 17, 1997. The claimant worked as a full time production employee. The claimant understood an employee could be discharged if the employee received four written warnings for the same offense. The employer's policy, however, states an employee will be discharged upon receiving four written warnings.

On April 4, 2005, the claimant received a written warning for failing to wear a protective covering. On April 20, the employer gave the claimant a written warning for failing to do a job. On May 10, 2005, the claimant received a written warning for chewing gum.

On September 19, 2005, when the claimant's production line was down, a co-worker put his hand between the claimant's legs by her crotch. The claimant tried to get away from the co-worker by jumping around. Feedback saw the claimant jumping around and other co-workers standing around and laughing. Feedback then observed the claimant put her hands on the co-worker's neck and push it toward her pelvic area. When Feedback saw the claimant do this, he told the claimant and co-worker go to the office.

The co-worker verified that the claimant pushed his head down. The claimant told the employer she had only been defending herself because the co-worker placed his hand in an inappropriate area on the claimant's body. The claimant did not agree with the co-worker's version that he only put his hand on her backside.

The employer gave the claimant her fourth written warning for inappropriate horseplay at work. If three written warnings had not already been in the claimant's personnel file, the employer would not have discharged the claimant on September 20, 2005.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The claimant did not realize she could be discharged if she had four written warnings for different problems. In accordance with its policy, the employer had no choice but to discharge the claimant on September 20, 2005. The employer established business reasons for discharging the claimant. The employer, however, has the burden to prove the claimant was discharged for work-connected misconduct as defined by unemployment insurance law.

On September 19, 2005, the claimant reacted to the inappropriate action of a co-worker. Feeback could not see everything and did not notice where the co-worker's hand was located on the claimant's body. The claimant did not intend to become involved in inappropriate horseplay, but did when she attempted to defend or extricate herself from this situation. The employer acknowledged that if the claimant did not have three previous warnings, she would not have been discharged just for the September 19 incident. The claimant may have used poor judgment on September 19, but the facts do not establish that she intentionally and substantially disregarded the standard of behavior the employer has a right to expect from employees. The evidence does not establish that the claimant committed work-connected misconduct. As of September 18, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's October 11, 2005 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of September 18, 2005, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjf