

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

STEPHEN C HENSLEY  
624 – 15<sup>TH</sup> ST  
MASON CITY IA 50401

AADG INC  
CURRIES-GRAHAM  
PO BOX 1648  
MASON CITY IA 50402-1648

Appeal Number: 05A-UI-00225-HT  
OC: 12/05/04 R: 02  
Claimant: Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant, Steven Hensley, filed an appeal from a decision dated December 27, 2004, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on January 24, 2005. and concluded January 26, 2005. The claimant participated on his own behalf. The employer, AADG, participated by Director of Human Resources Mark Evers, Employee Relations Manager Dan McGuire and Manager of Shared Services Doug Schroeder.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Steven Hensley was employed by AADG from June 1, 1974 until November 24, 2004. He was a full-time electrical engineer.

On January 6, 1997, the claimant received a written warning for allegations of sexual harassment which occurred four days prior. He was advised of the employer's zero-tolerance policy regarding harassment in the workplace. On June 17, 2003, he received a written warning and three-day suspension for an incident of inappropriate language and touching. He was required to be evaluated by the employee assistance program and notified his job was in jeopardy if there were any further incidents.

On November 19, 2004, a female employee reported to Employee Relations Manager Doug McGuire that the claimant had inappropriately touched her. While in her office, he had grabbed and massaged her shoulders briefly, and told her she was one of the few people in the office he still considered to be a friend. The matter was reported to Director of Human Resources Mark Evers who instructed Mr. McGuire to take a statement from the woman. She was later interviewed by Mr. Evers and Mr. McGuire on November 22, 2004, and confirmed the contents of her statement were true and correct. She further indicated she did not want to "get anyone in trouble" but had been made to feel very uncomfortable by Mr. Hensley's actions.

The claimant was on vacation on Monday, November 22, 2004, but was summoned to the office for a meeting. Mr. Evers discussed the allegation with him and he said he did not recall touching the co-worker, although he acknowledged he had been in her office. On November 24, 2004, the employer received an e-mail from the claimant, which he had written the day before, stating he had thought about the incident and recalled he had told the co-worker he had not seen her in several months, but considered her one of his few friends in the office and had "patted her on the shoulder."

The claimant returned to AADG on November 24, 2004, at which time he was discharged for violating the zero-tolerance harassment policy after prior warnings.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

Iowa Code section 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant had been advised his job was in jeopardy as a result of inappropriate conduct toward female co-workers in the work place. Although he denied any inappropriate conduct on November 19, 2004, toward his co-worker, the fact he admitted to touching her in any manner impairs his credibility as to the actual nature of the contact. Given the fact they were only co-workers, and had not even seen each other for several months, even patting her on the shoulder would be a questionable act. There was no need for any touching to occur and even if Mr. Hensley only wanted to be friendly and reassuring, there were other ways in which this could be accomplished.

The complainant was upset and nervous, if not actually distraught, but she felt the matter was important enough to report to the employer. The claimant knew, or should have known, that any contact between him and any female in the work place was inappropriate, given his prior disciplinary actions. His conduct was a violation of prior warnings and the employer's policies. It is conduct not in the best interests of the employer and he is disqualified.

DECISION:

The representative's decision of December 27, 2004, reference 01, is affirmed. Stephen Hensley is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

bgh/sc