

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CAREY ISHIKAWA**  
Claimant

**APPEAL NO. 13A-UI-03972-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PAPETTI'S OF IOWA**  
Employer

**OC: 03/17/13**  
**Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Carey Ishikawa, filed an appeal from a decision dated April 1, 2013, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on May 9, 2013. The claimant participated on his own behalf and with Amber Whipple. The employer, Papetti's, participated by Human Resources Representative Lisa Ensign.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Carey Ishikawa was employed by Papetti's from September 29, 2011 until March 9, 2013 as a full-time CIP operator. On March 6, 2013, employees came to Human Resources Manager Julie Brammer and alleged the claimant had exposed his buttocks to them on March 1, 2013. The claimant was suspended pending further investigation although he denied the allegations.

The human resources manager interviewed approximately six employees and all alleged the incident had occurred. The claimant was discharged on March 9, 2013 at the conclusion of the investigation, although he continued to deny he had done anything of the sort.

**REASONING AND CONCLUSIONS OF LAW:**

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.

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). In the present case the employer did not provide the written statements of the witnesses nor did it provide testimony from anyone who asserted they had seen what happened. The only employer witness was not even involved in the investigation or discharge decision.

If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which he was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

**DECISION:**

The representative's decision of April 1, 2013, reference 01, is reversed. Carey Ishikawa is qualified to receive unemployment insurance benefits, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/css