

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMMY J BLIND
Claimant

APPEAL NO. 09A-UI-16851-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALANIZ
Employer

OC: 09/27/09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Timmy Blind (claimant) appealed a representative's October 27, 2009 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Alaniz (employer) for causing dissension among co-workers. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 15, 2009. The claimant participated personally. The employer participated by Kayla Riley, Human Resources Generalist.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on March 11, 2003, as a full-time cutter operator. The claimant signed for receipt of the employer's handbook annually. He last signed for receipt on May 28, 2008. The handbook prohibits sexual harassment. The employer issued the claimant verbal warnings for making inappropriate comments.

A female co-worker complained to the employer that the claimant sent her text and voice messages of a sexual nature through another co-worker. The employer saw text messages talking about having sex in the back seat anytime anywhere. The claimant represented himself as more of a man than the female co-worker could handle. The employer terminated the claimant on September 17, 2009.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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 in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. He intentionally made sexual comments to a co-worker. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

DECISION:

The representative's October 27, 2009 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid

wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css