

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON L RHEINSCHMIDT
Claimant

APPEAL NO. 08A-UI-00084-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LENSCRAFTERS INC
Employer

**OC: 12/02/07 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a notice of fact-finder's decision dated December 24, 2007, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice was issued, a telephone conference hearing was scheduled for and held on January 17, 2007. The claimant participated personally. The employer participated by Paul Murphy, hearing representative, and Dave Busekrus, area manager.

ISSUE:

The issue in this matter is whether the claimant was discharged for intentional misconduct in connection with his work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from July 2, 2007, until December 4, 2007, as a part-time sales associate and was paid by the hour. The claimant was discharged on December 4, 2007, when the employer believed that he had violated a confidentiality instruction that had been given to him during a telephone conference call on November 20, 2007. Based upon a complaint that Lenscrafters, Inc., had received from the Sears Company, where Lenscrafters had a retail location, the employer was investigating the allegation. The allegation concerned inappropriate sexual contact. Following the telephone conversation, Mr. Rheinschmidt encountered a female Sears employee who inquired about the claimant's upset demeanor. Mr. Rheinschmidt responded that "an allegation had been made and your name was involved." The claimant did not consider his statement to be a violation of the confidentiality instruction, because other individuals had been privy to the telephone conversation itself and the claimant believed that he was only responding to an inquiry of concern made by a friend. Mr. Rheinschmidt was not aware that he had been specifically instructed not to make any reference to the allegation to any Sears employee.

When Lenscrafters management received another complaint from Sears management about the claimant's comment, a decision was made to terminate Mr. Rheinschmidt from his employment.

REASONING AND CONCLUSIONS OF LAW:

The question in this case is whether the evidence establishes that Mr. Rheinschmidt intentionally acted in a manner contrary to his employer's interests and standards of behavior by making a limited reference to the reason that he was upset in response to an inquiry. The administrative law judge concludes that it does not.

Mr. Rheinschmidt testified under oath that he was not aware that he had been prohibited from making any comments related to the incident whatsoever to any Sears employee. When initially advised of the allegation, Mr. Rheinschmidt denied involvement during a November 20, 2007 telephone conference. The claimant again denied the involvement. Although Lenscrafters management had instructed that the conversation be kept confidential, a number of other individuals were privy to the telephone conversation as it was taking place. Mr. Rheinschmidt believed that he was complying with the confidentiality requirement when he did not discuss the allegation with any other individuals. The claimant believed that his limited response to an individual that he considered to be a friend did not violate instructions that had been given to him. The evidence is not clear as to whether Mr. Rheinschmidt's limited statement to his friend who was employed at Sears was the basis for a further complaint or whether the complaint was generated by another employee for reasons that are not in the record. After reviewing the matter, the administrative law judge concludes that the claimant's limited statement in response to a direct and friendly inquiry was in the nature of an isolated instance of poor judgment that did not rise to the level of intentional disqualifying misconduct based upon the claimant's understanding of the instructions that had been given to him by his employer.

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.

For the reasons stated herein, the administrative law judge concludes that the claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated December 24, 2007, reference 01, is hereby affirmed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw