

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JAMES J OLSEN**  
Claimant

**ROSENBOOM MACHINE & TOOL INC**  
Employer

**APPEAL 17A-UI-00822-DL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/18/16**  
**Claimant: Respondent (2)**

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Iowa Admin. Code r. 871-23.43(9)a – Combined Wage Claim Relief of Charges  
Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed an appeal from the January 5, 2017, (reference 01) unemployment insurance decision that did not relieve the employer's account for combined wage claim benefits based upon a Minnesota unemployment insurance claim. The parties were properly notified about the hearing. A telephone hearing was held on February 14, 2017. Claimant participated. Employer participated through human resource director Jack Schrueurs and human resources generalist Brittany Gritters. Employer's Exhibits 1 - 6 were received.

**ISSUE:**

Can the Iowa employer can be relieved of benefit charges on the combined wage claim?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time assembler through May 18, 2016. The employer discharged him after sexual harassment allegations that he made statements to a pregnant female employee insinuating he was the father. He had been warned twice before. First on March 28, 2012, regarding comments about a high school female visitor on tour; and second, on November 19, 2013, when he made comments made about a female employee.

Claimant filed a combined wage claim in Minnesota but earned wages from this Iowa employer.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged for misconduct and the employer is relieved of benefit charges.

Iowa Code section 96.5(2)a provides:

**Causes for disqualification.**

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has presented substantial and credible evidence that claimant engaged in inappropriate sexually-related comments about an employee after having been warned. This is disqualifying misconduct.

Iowa Admin. Code r. 871-23.43(9)a provides, in part:

**(9) Combined wage claim transfer of wages.**

a. Iowa employers whose wage credits are transferred from Iowa to an out-of-state paying state under the interstate reciprocal benefit plan as provided in Iowa Code section 96.20 will be liable for charges for benefits paid by the out-of-state paying state. No reimbursement so payable shall be charged against a contributory employer's account for the purpose of Iowa Code section 96.7, unless wages so transferred are sufficient to establish a valid Iowa claim, and such charges shall not exceed the amount that would have been charged on the basis of a valid Iowa claim. However, an employer who is required by law or by election to reimburse the trust fund will be liable for charges against the employer's account for benefits paid by another state as required in Iowa Code section 96.8(5), regardless of whether the Iowa wages so transferred are

sufficient or insufficient to establish a valid Iowa claim. Benefit payments shall be made in accordance with the claimant's eligibility under the paying state's law. Charges shall be assessed to the employer which are based on benefit payments made by the paying state.

Since employer would be relieved of charges based upon this fact scenario in an Iowa claim, it shall be relieved of charges on this combined wage claim. Claimant's qualification and eligibility shall be determined by the state in which the claim was filed.

**DECISION:**

The January 5, 2017, (reference 01) decision is reversed. The account of the employer (account number 190653) shall not be charged. Claimant's qualification and eligibility shall be determined by the state in which the claim was filed.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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