

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RANDY R GARDEN
Claimant

APPEAL NO. 09A-UI-16505-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 10-04-09
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 26, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on January 12, 2010. The claimant did participate along with his wife Jaci Garden, Director of Nursing for the employer and was represented by Jeffrey A. Smith, Attorney at Law. The employer did participate through Linda Lee, Administrator; Amanda Shiltz, Dietary Supervisor; Katy Green, Social Services Coordinator; Mary Dotson, CNA and was represented by Gordon Peterson of TALX UC eXpress. Employer's Exhibits One through Five were entered and received into the record.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a maintenance supervisor full time beginning February 2, 2007 through October 6, 2009 when he was discharged.

The employer has a quality assurance meeting every day. The claimant regularly attended the meeting. During a meeting which took place on September 30, the claimant yelled at a coworker, Katy Green. He yelled at her that she needed to insure that residents were not using extension cords in their rooms and that if she did not then he wanted her to walk around every single day and check every single resident's room for an extension cord. The claimant was not Ms. Green's supervisor and he had no authority to direct and control her work activities. Ms. Green was embarrassed and humiliated by the claimant's treatment of her. Ms. Lee normally attends the meeting, but she was out of the office for a period of time including September 30. When Ms. Lee returned to the workplace, Kathy Elscott came to her and complained about how the claimant had yelled at Ms. Green and made her cry during the meeting. Ms. Elscott said the claimant's behavior was unacceptable and inappropriate. Another attendee of the meeting, Connie Mullenburg, also went to Ms. Lee to complain about the claimant's treatment of Ms. Green during the meeting. The claimant's wife, Jaci Garden was also in attendance at the meeting as she was and remains the Director of Nursing for the

employer. At hearing Mrs. Garden said she did not think her husband yelled at or raised his voice at Ms. Green. At the hearing the claimant admitted raising his voice when speaking to Ms. Green about the extension cords.

Under the employer's harassment policy, a copy of which was given to the claimant, yelling or verbal conduct when it has the purpose or effect of creating an intimidating ...work environment. The claimant did yell at Ms. Green in contravention of the employer's policy. The claimant was previously warned on March 16, 2009 about speaking in a sexually suggestive manner to a coworker. The claimant's comment was overheard by Ms. Dotson who found it offensive and complained to the employer. On August 11, 2009 the claimant was suspended for using profanity and referring to a coworker as lazy. The coworker was moved to tears and complained to the administrator. Those warnings for verbal behavior put the claimant on notice that his job was in jeopardy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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 administrative law judge is persuaded that the claimant yelled at Ms. Green during the quality assurance meeting. His behavior was a violation of the employer's harassment policy, a

copy of which had been given to the claimant. The claimant had prior warning about his language and how he spoke to coworkers. The claimant admitted raising his voice during the meeting, making his wife's testimony that he did not unbelievable. The employer's evidence does establish that the claimant committed substantial misconduct sufficient to disqualify him from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The October 26, 2009, reference 01 decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css