

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY KOON
Claimant

APPEAL NO. 13A-UI-12384-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**NPI SECURITY
NEIGHBORHOOD PATROL INC**
Employer

OC: 09/29/13
Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Timothy Koon (claimant) appealed an unemployment insurance decision dated October 23, 2013, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from NPI Security (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 27, 2013. The claimant participated in the hearing. The employer participated through Tom Scallon, Hiring Manager. Employer's Exhibits One and Two were admitted into evidence.

ISSUE:

The issue is whether the claimant was discharged for work-related misconduct.

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 employed as a full-time security guard from October 5, 2010 through October 4, 2013 when he was discharged for sexual harassment. The employer's work rules prohibit sexual harassment and violations of this policy might result in immediate termination. At the time of hire, the claimant signed for receipt of the employer's handbook and receipt of the policy regarding the reporting of sexual harassment.

On October 3, 2013, the claimant told a female co-worker that it would be easy for her to give her husband oral sex due to their height differences. The claimant had been working with or had worked with the co-worker that day and she reported the comment to the employer. The employer investigated the incident and the claimant admitted in front of two supervisors that he made the comment so he was discharged. In the hearing, he also admitted he made the comment and acknowledged that a sexual comment which makes a person uncomfortable is sexual harassment. However, the claimant denies that he violated company policy because the comment was made in the parking lot ten minutes after he clocked out.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on October 4, 2013 for sexual harassment. His comment was clearly in violation of company policy and since he said it to a co-worker, it does not matter whether he was on the clock or not since she had to continue working with him. The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated October 23, 2013, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs