

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GILLES ARSENAULT**  
Claimant

**APPEAL NO: 07A-UI-10271-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PERKINS STATIONERY INC**  
Employer

**OC: 10-07-07 R: 01  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 31, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 29, 2007. The claimant participated in the hearing. Brian Goetz, Owner and Ellen Livingston, Manager, participated in the hearing on behalf of the employer. Employer's Exhibit's One through Six were admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time delivery driver for Perkins Stationery from June 26, 2006 to October 5, 2007. On October 18, 2006, the employer issued a memo to the claimant and another driver about inappropriate behavior towards customers and told them if it happened again termination would occur (Employer's Exhibit One). The claimant was also removed from the clients that complained (Employer's Exhibit One). On January 5, 2007, the claimant received a written warning about acting unprofessionally and inappropriately at certain employer accounts (Employer's Exhibit Two). The employer discussed the difference between a simple, innocuous compliment and a sexually harassing comment but the claimant continued to maintain he was not doing anything wrong (Employer's Exhibit Two). On September 12, 2007, the claimant received a written warning after a salesperson reported that a customer from the Area Educational Agency complained to him that the claimant "made a number of inappropriate and unsettling remarks to the customer. He had first told her how much he liked her outfit (a simple t-shirt and khaki slacks) and added that he found her beautiful. As the customer attempted to ignore the comments he went on to suggest that she should meet him after work for a drink. The customer refused and told the driver that she was married and that her husband would not approve of that. The driver suggested that he would not need to know and added that he knew what car the customer drove and where she parked. Feeling more and more uncomfortable, the customer suggested he should leave. The driver than said the customer should not be surprised if he was waiting for her when she left work and told her the

make and color of the car he drove and suggested and she should be watching for him. At this point, my customer's boss entered the room and the driver immediately left. My customer indicated to me that she was concerned and a bit frightened by the unwanted attention and implication that she was perhaps being watched or stalked. Her manager indicated that the driver was no longer welcome in the building. Since learning of the incident, I have personally made all deliveries to the account and have assured the customer that there will be no further contact" (Employer's Exhibit 3). That document was written by a sales associate after interviewing customers. On October 4, 2007, two additional customers complained that the claimant acted in an inappropriate manner toward them while on a delivery (Employer's Exhibit Four). Both women, from two different accounts, were concerned about the claimant and when he entered their facilities he made "suggestive comments" making the women uncomfortable (Employer's Exhibit Four). One customer stated he stopped by their store even on days he did not have a delivery and would tell her he loved her and would drive by her house on the weekends (Employer's Exhibit Four). Another customer said the claimant would talk to her about how she was dressed and tell her how pretty she was (Employer's Exhibit Four). The other women in the office would warn her when he was coming so she could hide in the storeroom. (Employer's Exhibit Four) Following these complaints and numerous warnings the employer gave the claimant the opportunity to resign or be discharged and the claimant chose to resign (Employer's Exhibit Six). The employer's handbook, which the claimant signed for indicating acknowledgement and agreement, addresses the issue of sexual harassment (Employer's Exhibit Five). The claimant is a native of France and did not believe he was doing anything wrong beyond complimenting the women.

#### **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 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 claimant was warned October 18, 2006; January 5, 2007; and September 12, 2007, that his behavior with female customers was unprofessional and inappropriate. With each warning the employer explained the difference between friendly and appropriate customer service and sexual harassment. Despite those warnings the claimant continued his behavior with the female customers and did not seem to learn from or alter his behavior or approach to the customers in any manner. The employer had every right to be concerned about its delivery driver's interactions with its customers because that is effectively the face of its business and while the claimant may have considered his comments simple compliments he has a responsibility to be able to differentiate between professional, appropriate behavior and sexual harassment. Although the claimant denied many of the allegations, it seems unlikely that the customers would make those claims against the claimant if they were not at least partially true. Just like any other employee, the claimant had a responsibility to learn the difference. Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

**DECISION:**

The October 31, 2007, 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.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs