

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRY HEERTS

Claimant

APPEAL NO: 14A-UI-03566-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 03/09/14

Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 28, 2014, 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 April 24, 2014. The claimant participated in the hearing. Kristi Fox, Human Resources Clerk, participated in the hearing on behalf of the employer.

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 general maintenance worker for Tyson Fresh Meats from May 24, 2005 to March 11, 2014. He was discharged for putting his hand on another employee during a confrontation in violation of the employer's code of conduct.

On March 10, 2014, the claimant reported for his shift and as he prepared to go on the floor he realized there were no radios in supply for his team to use. Radio communication is relied on heavily so the maintenance workers know where to go when there is a problem and can speak to each other. The claimant used another employee's radio to call the shift that was preparing to leave for the day and told them to bring their radios back to supply so the claimant's crew could use them and get on the floor. Casey Kramer, who was on the other shift, became upset with the claimant and said, "Hey, what are you doing calling for radios. There is probably a reason they haven't turned the radios in yet." The claimant asked Mr. Kramer what he was "so irate about" because Mr. Kramer was "in (the claimant's) face." Mr. Kramer responded that they were his team members and he was just looking out for them. The claimant stated, "Get out of my face Casey." Mr. Kramer was almost touching the claimant's chest, "hovering" over him. The claimant went to supply and picked up the blades he needed and when he turned around Mr. Kramer was still there and made further comments about his team needing the radios. The claimant said, "Why are you so concerned Casey? You are done for the day." The claimant started walking toward the floor and Mr. Kramer walked right next to him. They came to an area

where they had to walk between a staircase and an I-beam. Mr. Kramer was still “in (the claimant's) face” and the claimant put his hand on his chest and said, “Back off Casey.” He was holding the blades in his other hand and “lightly” touched Mr. Kramer on the chest while stepping backward at which point the claimant tripped over the base of the I-beam and fell down. Mr. Kramer was not physically touching the claimant or preparing to do anything to him physically. Mr. Kramer went to the office and reported the situation. A green hat came and asked the claimant if he pushed Mr. Kramer and the claimant stated he did not push him but did touch his chest at which time he was instructed to accompany the green hat to the human resources office. A union steward who was in the shop at the time of the incident told the employer the claimant grabbed, shook and pushed Mr. Kramer backwards. The employer terminated the claimant's employment the following day.

The claimant received counseling for failure to follow directions and a written warning and suspension for safety April 19, 2013, because the claimant repeatedly wore unauthorized safety glasses. He received a written warning February 19, 2014, for failure to follow directions and displaying a poor attitude.

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.

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).

While the claimant did not grab, shake or push Mr. Kramer, he admitted that he did place his hand on his chest and that action could be considered an assault in addition to a violation of the employer's hostile work environment policy. The claimant was annoyed but was not being physically threatened by Mr. Kramer. While he wanted radios for his crew and himself before they went out on the floor, he could have gone to the floor without radios; it was simply more convenient to have the radios to start the shift. Additionally, the claimant did not know if the previous shift was still using the radios before asking that they be returned. Although the administrative law judge agrees with the claimant that Mr. Kramer apparently overreacted to the claimant's request for the radios, the claimant knew or should have known that it is never appropriate to place his hands on a co-worker. Under these circumstances, the administrative law judge must conclude 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). Therefore, benefits must be denied.

DECISION:

The March 28, 2014, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs