

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**NATHAN L ADAMS**  
Claimant

**WEILER INC**  
Employer

**APPEAL 17A-UI-11357-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/15/17**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 31, 2017, (reference 01) unemployment insurance decision that denied benefits based on his discharge for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on November 27, 2017. The claimant participated and testified. The employer participated through Director of Human Resources and Finance Lynette Hoke and Area Manager Don Sparks. Also present, but not testifying, on behalf of the employer was Joe Strode. Employer's Exhibits 1 through 6 were received into evidence.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a painter from June 15, 2016, until this employment ended on October 18, 2017, when he was discharged.

On October 18, 2017, a female employee reported that claimant was making her uncomfortable because she had observed him staring at her while rubbing his genitals on several occasions. The employee reported this happened most recently the day prior and that there was a witness to the incident. The female employee was visibly upset and reported she was "creeped out" by claimant's behavior. The employer investigated further, as the behavior alleged violates their harassment policy. (Exhibit 6). When interviewed by the employer, the witness identified by the female employee confirmed, the day prior, he had observed claimant staring at the female employee and appeared to be doing something "weird." The witness explained to the employer that claimant's back was to him, so he could not see what he was doing. The witness told the employer he then walked around claimant to get a better look and observed him touching his crotch area with an intense expression as though he was fondling himself. The witness

reported this went on for several minutes even after the female employee raised her hands and arms towards claimant in a "What?" motion.

Prior to this incident claimant had been warned twice before about engaging behavior that his coworkers found intimidating in violation of the employer's hostile work environment policy. (Exhibits 1 and 2). Neither of these incidents involved allegations of sexual harassment or situations similar to that reported to the employer on October 18. When the employer spoke to the claimant about the allegations made by his female coworker, he had no explanation. Claimant was then discharged from employment. (Exhibit 3). Claimant denied the allegations during the hearing. Claimant testified he had no prior issues with his female coworker or her witness to the incident, but believed they had been coerced into making these allegations by a third coworker with whom he had previously had an altercation. Claimant provided no explanation as to why he believed this was the case, other than noting no prior allegations had been made against him and this allegation was made just two months after his altercation with the third coworker.

### **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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

Claimant was discharged after the employer concluded he violated the sexual harassment policy. This decision followed an investigation in which statements were taken from claimant's female coworker and a witness. Hoke testified the female employee was visibly upset and reported this had occurred before but she did not come forward because she did not have a witness. The fact that there was a witness who corroborated her story further bolsters the employee's credibility. The claimant denied the allegations made against him and testified he believed his coworkers were coerced into making the allegations. Claimant did not, however, provide any factual basis for this suspicion. After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's version of events to be more credible than the claimant's recollection of those events.

The employer has an interest and duty in protecting the safety of all of its employees. Claimant's behavior was in violation of specific work rules and against commonly known acceptable standards of work behavior. Due to nature of the behavior involved the employer was concerned about the well-being of the employee reporting the harassment and made the decision to terminate claimant. Claimant's behavior was contrary to the best interests of employer and the safety of its employees and is disqualifying misconduct even without prior warning. Benefits are denied.

**DECISION:**

The October 31, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment for reasons related to job misconduct. Benefits are withheld until such time as the he works in and has been paid for wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs