

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAYMOND R FROST
Claimant

APPEAL NO: 08A-UI-03268-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**SALEM MANAGEMENT INC
AVENTURE STAFFING & PROFESSIONAL
SERVICES**
Employer

**OC: 02/24/08 R: 01
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Salem Management (employer) appealed a representative's March 25, 2008 decision (reference 02) that concluded Raymond Frost (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 16, 2008. The claimant participated personally. The employer participated by Robert Hardy, Human Resources Assistant, and Cyd Hall, Office Manager. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was discharged for 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 hired on or about April 16, 2007, as a full-time van driver. The claimant signed for receipt of the employer's handbook on March 28, 2008. In January 2008, the claimant asked a temporary employee if she wanted to go out. She answered in the affirmative. Later she asked him if he would take her to work. He responded that he was sure they could work something out. The female told the employer she felt the comment constituted sexual harassment. On January 28, 2008, the employer issued the claimant a verbal warning. Later the female called the claimant at 4:00 a.m. and hung up. The employer did nothing about the claimant's complaints.

On February 15, 2008, the claimant transported Mr. Church in the van. Mr. Church was playing with the door lock and the claimant thought he might break it. Others in the van tried to get Mr. Church to stop. After the van arrived at the employer's office, the other passengers in the van went directly into the office. Mr. Church got out and approached the claimant's window and knocked. Mr. Church told the claimant he did not appreciate the claimant treating him like a child. The claimant got out of the van and stood with one hand on the side of the van and one

hand at his side. His back was to the employer's camera. The claimant asked Mr. Church what his problem was. Mr. Church removed his glasses and placed them, along with his papers, on the ground. He shoved the claimant twice. The claimant pointed at his own chin and told Mr. Church to take his best shot. Mr. Church walked away into the office. The claimant got in his van.

The claimant immediately called the employer to complain. At the same time Mr. Church was in the office complaining. The employer investigated and terminated both the claimant and Mr. Church.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). "[A]n employer has the right to expect decency and civility from its employees." The court found substantial evidence of offensive words and body language in the record of the case. Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995). A threat to make it miserable for the employer

is sufficient to establish misconduct. Myers v. Employment Appeal Board, 462 N.W.2d 734 (Iowa App. 1990).

An employer has a right to expect employees to conduct themselves in a certain manner. The claimant did not instigate the assault. The claimant did not touch Mr. Church. Mr. Church physically assaulted the claimant. The employer did not provide sufficient evidence of job-related misconduct at the hearing. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's March 25, 2008 decision (reference 02) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs