

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KRISTI M CALLAHAN**  
Claimant

**APPEAL NO. 12A-UI-13748-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ABM JANITORIAL SERVICES NORTH**  
Employer

**OC: 10/21/12**  
**Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, ABM Janitorial Services North (ABM), filed an appeal from a decision dated November 9, 2012, reference 04. The decision allowed benefits to the claimant, Kristi Callahan. After due notice was issued, a hearing was held by telephone conference call on December 19, 2012. The claimant participated on her own behalf. The employer participated by Human Resources Manager Erin Reinders, District Manager Karen McDowell, On Site Manager Misty Martin and was represented by Employers Edge in the person of Sam Krauss.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Kristi Callahan was employed by ABM from June 7, 2012 until October 23, 2012 as a full-time day porter. At the time of hire she was notified there was an on-line handbook for company rules and policies and was urged to access it. Her first attempt was unsuccessful but she did not make any further attempt to read it.

On October 17, 2012, On Site Manager Misty Martin received a complaint from Randy, an employee. He stated the claimant had put a blow up nude male doll in his company truck with a note written on it saying, "Randy, me love you long time."

Randy's spouse also works for ABM and she told him she did not want it in the truck. The claimant took it out of the truck and took it to Randy's home and put it inside the front door where it was later found by his 17-year-old son. It was the doll being taken to Randy's home that caused the complaint.

Ms. Callahan was suspended per company policy and Human Resources Manager Erin Reinders investigated by talking with her as well as Randy. The claimant admitted to putting the doll in the truck and in the front door of Randy's home. She stated she knew it was "one hundred percent wrong." She was discharged when she returned to work on October 23, 2012.

The company harassment policy includes “display of sexual materials” and is a zero-tolerance policy.

Kristi Callahan has received unemployment benefits since filing a claim with an effective date of October 21, 2012.

**REASONING AND CONCLUSIONS OF LAW:**

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 admitted to placing a sexually explicit blow up doll in a co-worker's truck, and then taking it to his residence where it was discovered by his minor son. This is a direct and serious violation of the zero-tolerance harassment policy. The employer has the obligation to provide a safe and harassment-free work environment for all employees and the claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault,

the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

**DECISION:**

The representative's decision of November 9, 2012, reference 04, is reversed. Kristi Callahan is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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