

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

LESTER J GRIFFIN
Claimant

APPEAL NO: 18A-UI-05034-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHARLES GABUS MOTORS INC
Employer

OC: 02/25/18
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 13, 2018, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 25, 2018. The claimant participated in the hearing. Kelsey Gabus, Human Resources Director; Travis Bergeson, Service Manager; Emma Dittert, Service Lane Support; Rebeca Hildreth, Express Service Advisor; J.P Phillips, General Manager; and Christopher Hunter, Employer Representative; participated in the hearing on behalf of the employer. Department's Exhibits D-1 and D-2 and Employer's Exhibits 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: A disqualification decision was mailed to the claimant's last known address of record on April 13, 2018. The claimant did not receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by April 23, 2018. The claimant called the Department and learned of the decision and filed an appeal April 30, 2018. Because the claimant did not receive the decision, the administrative law judge must find the appeal is timely.

The claimant was employed as a full-time service lane support employee for Charles Gabus Motors from August 21, 2017 to February 22, 2018. He was discharged from employment for making inappropriate comments to another employee while at work, in violation of the employer's sexual harassment policy (Employer's Exhibit Four).

On February 21, 2018, Service Lane Support employee Emma Dittert handed keys to another employee so she could bring a car up to the front of the service department. Ms. Dittert walked back to the desk and the claimant asked her what they were talking about. Ms. Dittert said she

gave the other employee some keys and the claimant stated, "Yeah sure. I bet you were talking about me and how big my dick is." The claimant had made several other similar comments in the last few months and Ms. Dittert decided she "had enough." She reported his remark to Service Manager Travis Bergeson who stopped her until Human Resources Director Kelsey Gabus could come to his office and participate in the conversation. Ms. Dittert provided a written statement to the employer (Employer's Exhibit Two). Mr. Bergeson then asked Express Service Advisor Rebecca Hildreth if she had heard or observed any other remarks or behavior from the claimant and she wrote a statement indicating she heard the claimant make several sexually related comments and jokes in the service lane (Employer's Exhibit Three). The employer then met with the claimant and he admitted making inappropriate comments but said other employees were making inappropriate comments as well and if the employer terminated the claimant's employment, it would have to terminate everyone. The claimant testified he did make the statement reported by Ms. Dittert but said he thought they were friends and argues everyone in the service area talked in that manner. The claimant did testify he knew his actions were wrong.

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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant's comment to Ms. Dittert February 21, 2018, was inappropriate and unprofessional and he knew or should have known it was a violation of the employer's sexual harassment policy. The claimant's language created an offensive work environment and his defense that everyone he worked with participated in that type of behavior does not justify his own conduct.

Under these circumstances, 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). Therefore, benefits are denied.

DECISION:

The April 13, 2018, reference 02, decision is affirmed. The claimant's appeal is timely. 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/scn