

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARK D FLETCHER**

Claimant

**APPEAL NO. 08A-UI-11343-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FOUR OAKS INC OF IOWA**

Employer

**OC: 11/02/08 R: 04  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated November 24, 2008, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on December 16, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Pete Keiffer. Karen Breuss participated in the hearing on behalf of the employer with a witness, Travis Meiborg. Exhibits One through Four were admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a night worker in the employer's residential facility for adolescents with behavioral problems from July 27, 2006, to November 4, 2008. The claimant was informed and understood that under the employer's work rules, employees were prohibited under the employer's sexual harassment policy from engaging in any verbal or physical conduct of a sexual nature that is intimidating, demeaning, derogatory, hostile, or offensive.

On November 1, 2008, two male teenaged clients reported that during the early morning hours that day they had overheard the claimant talking to a coworker. They reported the claimant had made derogatory comments of a sexual nature about a female employee. The female employee learned about the comments and complained to management. The reports were untrue as the claimant had not made the comments attributed to him. One of the clients who reported the comments had been disciplined by claimant and had previously claimed the claimant had treated him more harshly than other clients because he was black. Those allegations had been determined to be untruthful.

On November 4, 2008, the coworker who was on duty that night was questioned about any inappropriate conversations he and the claimant had on November 1. He reported the claimant had made the same comment about the female employee. A few days before November 1, the

claimant had reported to his supervisor that he had observed the coworker wrestling with clients in their rooms in the morning, which would involve prohibited physical contact with clients. When the claimant was questioned at the time of his discharge about this, he denied making any derogatory statements about any female coworker and was not informed specifically what he was alleged to have said. The employer discharged the claimant on November 4, 2008, for violating the employer's sexual harassment policy.

#### **REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The employer's evidence consisted of statements from individuals who were not under oath or subject to cross-examination. Although the statements allegedly made by the claimant would not technically be hearsay since they would be considered statements made by a party under Iowa Rules of Evidence Rule 5.801(d)(2), the same concerns arise about the statements since their credibility depends on whether they perceived and remembered things accurately and whether they had a motive to lie about what happened. The claimant testified credibly that he did not make the statements, he offered evidence as to reasons for the two client and the other coworker would fabricate the accusation, and this testimony was corroborated by his supervisor, Pete Keiffer, who also testified that he had never heard the claimant make any statement of sexual nature about other employees.

The employer has failed to meet its burden to prove by a preponderance of the evidence that the claimant made the statements that led to his discharge. No willful and substantial misconduct has been proven in this case.

**DECISION:**

The unemployment insurance decision dated November 24, 2008, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs