

from September 15, 2003 until September 16, 2005 as a full-time carpenter. He was discharged based on an allegation of sexual harassment.

On the morning of September 15, Mr. Carroll told a coworker, Kathy, that she looked good and then put his arm around her shoulder. Later that day, the two were walking back from the lunch trailer. Kathy told the employer that, during that walk, Mr. Carroll stated that if no one had been around that morning they would be charging him with rape. She also told the employer that she stated to Mr. Carroll that her coworkers would tar and feather her if they saw her talking to him. Lastly, she told the employer that shortly after that, Mr. Carroll walked by her and stated that he could not believe that she would say that to him.

When questioned by the employer, Kathy indicated that she did not object to Mr. Carroll putting his arm around her. Her objection was to his reference to rape in their conversation after lunch. Mr. Carroll denied having used the term or having made any reference to sexually assaulting Kathy. He indicated he had told her he would hate her if she did not turn around and talk to him as the two were walking away from the lunch trailer. The employer had not received any prior complaints from female employees alleging inappropriate conduct on the part of Mr. Carroll. The complaint from Kathy was the sole reason for his discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Carroll was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Carroll was discharged based on an allegation that he sexually harassed a coworker. The competing evidence consists of Kathy's written statement and Mr. Carroll's sworn denial of the allegation. The conversation at issue took place on a construction job site with its attendant noises. Thus, there is the possibility that Kathy misheard Mr. Carroll and believed he said "rape" rather than "hate." Mr. Carroll did not have any history of inappropriate conduct with female coworkers. Kathy was not available to be questioned concerning the circumstances of the statement attributed to Mr. Carroll. Given the above factors, and the fact that the employer had the burden of proof, the administrative law judge concludes that any doubt as to what was said on September 15 shall be resolved in Mr. Carroll's favor. It is concluded, therefore, that disqualifying misconduct has not been established. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated October 6, 2005, reference 01, is hereby reversed. Mr. Carroll was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/kjf