

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH DRUMMY
Claimant

APPEAL NO. 10A-UI-15722-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TPI IOWA LLC
Employer

OC: 05/16/10
Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Joseph Drummy (claimant) appealed an unemployment insurance decision dated November 5, 2010, reference 04, which held that he was not eligible for unemployment insurance benefits because he was discharged from TPI Iowa, LLC (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 29, 2010. The claimant participated in the hearing. The employer participated through Terri Rock, Human Resources Manager. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time manufacturing associate from December 21, 2009 through October 8, 2010, when he was discharged for repeated harassment of a female co-worker. The employer has zero tolerance for harassment. On October 7, 2010, the claimant grabbed the ties of a sweatshirt a female co-worker was wearing and asked her if she knew what the ties were for and then told her that the ties were to choke her to death. The claimant admits saying a comment involving choking but claims he said this could be used to choke you to death. He claims they were just joking around.

The co-employee said the claimant had also harassed her in other ways. He put a dirty rag in her hand one time and told her he had used it to wipe his butt and he stepped in front of her when she was walking so she would have to stop. The claimant admits doing these gestures. The co-employee keeps cigarettes in her smock pocket worn on the front of her body. The claimant repeatedly tried to grab her cigarettes and even got them one time, but he denies doing this.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for harassing a female co-worker. On October 7, 2010, he grabbed the strings of a hooded sweatshirt the co-worker was wearing and made a comment about the strings being used to choke her to death. The claimant contends he was joking around, but death is not really a funny topic. Furthermore, a reasonable person would know that a comment about a co-worker's death would be highly inappropriate. The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated November 5, 2010, reference 04, is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw