

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GLEN A TERPSTRA
Claimant

ADAPTHEALTH LLC
Employer

APPEAL NO. 23A-UI-06805-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/21/22
Claimant: Respondent (1)

Iowa Code Section 96.5(2)(a) & (d) – Discharge

STATEMENT OF THE CASE:

On July 7, 2023, the employer filed a timely appeal from the June 27, 2023 (reference 04) decision that allowed benefits to the claimant, provided the claimant met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on May 23, 2023 for no disqualifying reason. After due notice was issued, a hearing was held on July 26, 2023. The claimant did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Paul Formanek represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant, which record reflects no benefits have been paid to the claimant in connection with the May 28, 2023 "additional claim." Exhibit 1 through 4 were received into evidence. The administrative law judge left the hearing record open until 4:30 p.m. on July 27, 2023 for the limited purpose of allowing the employer to submit a copy of its sexual harassment policy. The employer did not submit materials by the agreed upon deadline and the materials submitted after the agreed-upon deadline were not received into evidence.

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Glen Terpstra (claimant) was employed by AdaptHealth, L.L.C. as a fulltime Customer Service Specialist from November 2022 until May 23, 2023, when the employer discharged him from the employment.

On May 1, 2023, the claimant sent a Snapchat message to a female coworker in which he offered the coworker payment in exchange for a sex act. The claimant sent the message to the coworker while both were off-duty and away from the workplace. The claimant and the coworker had been friends up to that point. The pair had previously worked together for a different employer and spent time together outside of their work at AdaptHealth. The coworker

was offended by the crude sexual advance and blocked the claimant on Snapchat. The coworker felt the overture thereafter made working with the claimant “weird.” The coworker reported the claimant’s sexual overture to the employer on May 3, 2023.

The employer investigated the matter as possible sexual harassment. The employer interviewed the claimant on May 8, 2023. The claimant conceded he had sent the message soliciting the sex act in exchange for payment. The claimant shared with the employer that the female coworker had on multiple occasions previously engaged in conversation with the claimant of an explicit sexual nature and had gone so far as to request that the claimant set up a separate Snapchat account for correspondence exclusively with the female coworker. The claimant asserted the female coworker had repeatedly gone out of her way to enter his workspace in the workplace. The employer interviewed the female coworker on May 9, 2023.

On May 17, 2023, the employer again contacted the claimant and made the request that the claimant put in writing what he had told the employer on May 8, 2023. The claimant initially declined to provide a written statement without an assurance of continued employment. The employer declined to provide such assurance. Before the conversation ended the claimant agreed to provide a written statement. The claimant subsequently did not supply a written statement.

On May 22, 2023, the employer contacted the claimant to follow up on the request for a written statement. The claimant declined to provide a statement. The claimant again asserted that the sexual banter had been mutual. The employer told the claimant it was the claimant’s right not to provide a further statement.

At some point, the female coworker elected to leave her temporary work assignment with AdaptHealth, L.L.C.

On May 23, 2023, the employer discharged the claimant from the employment. The employer erroneously concluded the claimant had engaged in quid pro quo sexual harassment of the female coworker. . The claimant had no supervisory authority or other control over the claimant. The employer’s fallback theory was that the claimant had substantially interfered with the female coworker’s work environment and/or had created a hostile or offensive work environment. The employer had a sexual harassment policy. The employer provided the policy to the claimant during the employment. The policy pertained to conduct in the workplace, but made reference to social settings.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) and (d) provides as follows:

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.
 - ...
 - d. For the purposes of this subsection, “misconduct” means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

...
(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

...
(6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.

...

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. For the purposes of this rule, "misconduct" is defined as a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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 a 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. Misconduct by an individual includes but is not limited to all of the following:

...
(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

...
(6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.

....

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See Iowa Admin. Code r.871 -24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected

the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).


Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

Violation of a specific work rule, even off-duty, can constitute misconduct sufficient to disqualify a claimant from unemployment insurance benefits. See *Kleidosty v. Employment Appeal Board*, 482 N.W.2d 416, 418 (Iowa 1992). But the employer must have a work rule that covers the off-duty conduct.

The evidence in the record is insufficient to establish misconduct in connection with the employment. The evidence indicates an off-duty personal relationship between the claimant and the female coworker with indications of sexualized banter that was mutual until the coworker thought the claimant had gone too far with his sexual overture. The employer erroneously perceived a nexus between the off-duty personal relationship and the work environment. The evidence fails to establish that the claimant knowingly or intentionally violated an employer policy or that the claimant engaged in work-related sexual harassment. The claimant was discharged for no disqualifying reason. Accordingly, the claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The June 27, 2023 (reference 04) decision is AFFIRMED. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.



James E. Timberland
Administrative Law Judge

08/03/23
Decision Dated and Mailed

JET/jkb

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.