

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DALE L HARRIS
Claimant

APPEAL NO. 14A-UI-08949-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TPI IOWA LLC
Employer

OC: 08/03/14
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Dale Harris (claimant) appealed a representative's August 25, 2014 (reference 01) decision that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with TPI Iowa (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 16, 2014. The claimant participated personally. The employer participated by Danielle Williams, Human Resources Coordinator. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 13, 2011 as a full-time production worker. The claimant signed for receipt of the employer's handbook on June 7, 2011 and September 18, 2013. The claimant was on permanent restrictions and only swept the floor. He did not work in the shop. Prior to a co-worker being hired, the claimant joked he was going to ejaculate into his fish pond on his home property.

When the person was hired, two employees heard the claimant tell the co-worker repeatedly he was going to ejaculate into the co-worker's pond. Later an employer received a picture from the claimant of the co-worker's head superimposed on to a picture of two people engaged in a sexual act. Other employees received the picture and the picture was on the internet. The claimant told the co-worker he did not send it and it was not on Facebook but other employees saw it. The co-worker told the claimant to stay away from him. The claimant came into the shop and leaned on the co-worker's toolbox. The co-worker's tools had been removed from the toolbox. On August 7, 2014 the co-worker filed a complaint of harassment against the claimant. On August 8, 2014 the employer terminated the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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.

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 proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the employer's testimony to be more credible. The claimant was told to stay away from the shop and the co-worker but he continued to enter the shop and lean on the co-worker's possessions. While the claimant had a right to be in the shop for meetings with his supervisor, his appearance in the shop at other times was unnecessary. This type of behavior gives a lack of credibility to the claimant's statement. The claimant seemed to find ways to spend more time around the co-worker to harass him. The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. He spent time in the shop when the co-worker asked him to stay away from him. He touched his toolbox and tools when the co-worker asked him to stay away. The claimant threatened to enter the claimant's property and engage in a sexual act. He may have produced an altered picture of the co-worker

and posted it on the internet. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

DECISION:

The representative's August 25, 2014 (reference 01) decision is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

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