

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADAM A CALE

Claimant

APPEAL NO. 13A-UI-09890-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC

Employer

OC: 12/30/12

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated August 19, 2013, reference 04, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on October 1, 2013. Claimant participated. The employer participated by Ms. Alejandra Rojas, Human Resource Specialist. Employer's Exhibits A and B were received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with his work.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Adam Cale was employed by West Liberty Foods from May 20, 2013 until July 2, 2013 when he was discharged for violating the company's zero tolerance for harassment policy. Mr. Cale was employed as a full-time safety coordinator and was paid by the hour. His immediate supervisor was Rhonda Gonzalez.

Mr. Cale attended out of town training in the state of Kansas between June 24 and June 28, 2013. West Liberty Foods LLC received a complaint from a rental car location in the state of Kansas regarding Mr. Cale's behavior while he was attempting to rent a car during his work-related trip to Kansas. In conjunction with attempting to rent the car Mr. Cale had sent text messages to Lisa Nazareth, a company employee who assisted other employees with travel arrangements.

Ms. Nazareth complained to company management that Mr. Cale had been sexually harassing in his text messages and he continued to engage in sexually harassing texting after the claimant had been asked to stop by Ms. Nazareth.

The employer investigated the complaints and determined that in the text messaging sent by Mr. Cale the claimant had made inappropriate statements that included "your voice is soothing,"

“what do you look like.” “I like older women,” and “I’d love for you to be my hot mama.” The texting also showed that Mr. Cale had continued in that vein of texting although Ms. Nazareth had specifically stated “I don’t go for younger men and I don’t mix work with pleasure...I am in a very happy relationship right now and my oldest son is your age.”

Based upon the specific complaint that was made by Ms. Nazareth and review of the text messaging that Mr. Cale had engaged in, the employer concluded that the claimant had violated the company’s zero tolerance on sexual harassment policy. Mr. Cale had acknowledged receipt of the policy and had attended orientation where the policy was further explained.

It is the claimant’s position that he “knows harassment” and did not engage in it. It is the claimant’s position that he was initially attempting to establish a relationship with Ms. Nazareth and did not stop text messaging sooner, but was requested to do so, because in affect he believed Ms. Nazareth was being coy. Mr. Cale maintains that he did stop the text messaging later after he concluded that Ms. Nazareth was not interested in establishing a relationship with him. Mr. Cale denies yelling at the rental person in Kansas and stating, however, that he was very upset at the way that program company was conducting business.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

Iowa Code section 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 of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant the denial of unemployment insurance 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).

Inasmuch as the evidence in the record establishes that Mr. Cale made repeated inappropriate comments to the female worker employed by West Liberty Foods and continued to make comments of that nature after he had been reasonably told to discontinue the activity, the administrative law judge concludes that the claimant's discharge took place under disqualifying conditions. The claimant knew or should have known that making sexually suggestive comments and directing questions of that nature to a female worker was inappropriate and especially so when the other worker indicated that the conduct was unwelcome and should stop. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated August 19, 2013, reference 04, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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