

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GREG STEELE

Claimant

CLARINDA REGIONAL HEALTH CENTER

Employer

APPEAL 16A-UI-00002-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/06/15

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 22, 2015 (reference 01) unemployment insurance decision that denied benefits based upon misconduct. The parties were properly notified about the hearing. A telephone hearing was held on January 25, 2016. Claimant participated. Employer participated through HIM coder Connie Apperson and CFO Melissa Walter and was represented by Kristen Beck. Human resources assistant Pat Davison observed. Employer's Exhibit One and Two were received.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as an HIM manager from April 21, 2014 and was separated from employment on December 4, 2015; when he was terminated.

Employer has a policy prohibiting harassment. In June 2015, claimant attended a training session on behaving appropriately in the workplace.

During October 2015, claimant suggested to a co-worker, Miguel, which he dress up as a Mexican jumping bean for Halloween. Miguel is Hispanic and the comment offended him. Miguel complained to CFO Melissa Walter about the comment. Claimant had previously been given verbal warnings regarding inappropriate comments. Employer issued claimant a written warning on October 16, 2015 and was warned that further inappropriate comments could result in the termination of his employment.

Around Thanksgiving 2015, employees were talking about terrorism. Claimant remarked, "If they are brown, shoot them down." Miguel was present and felt uncomfortable.

During a meeting on December 2, 2015, claimant remarked to a group of employees that Miguel had performance problems and then stated "Just ask his wife."

The next day, on December 3, 2015, HIM coder Connie Apperson reported claimant's comment at Thanksgiving and his comment at the December 2 meeting.

Employer terminated claimant's employment on December 4, 2015 because of a documented pattern of inappropriate behavior.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of

unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

Here, claimant made inappropriate comments in the workplace after having been warned his employment was in jeopardy for similar conduct. Claimant admits to making the comment "If they're brown, shoot them down" but states he was only repeating and criticizing Donald Trump. A firsthand witness, Connie Apperson, denies this was the case. I find Apperson more credible as she has no apparent motivation to lie. Even if claimant were only repeating Donald Trump, he should have known better than to make that comment in the workplace given that he had just received a written warning in October 2015 for making the comment about a Mexican jumping bean. Claimant denies making the second comment about the employee's performance issues. Again, I find Apperson's testimony more credible on this point. Several different people complained about claimant's inappropriate comments throughout the course of his employment. It is not likely that so many different people were lying or taking comments out of context on so many separate occasions. Employer has established claimant was terminated for job-related misconduct.

DECISION:

The December 22, 2015 (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Christine A. Louis
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Decision Dated and Mailed

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