

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NICHOLAS L SCHWIEN
Claimant

CAPTIVE PLASTICS LLC
Employer

APPEAL 17A-UI-05589-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/30/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 17, 2017 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for engaging in conduct not in the best interest of his employer. The parties were properly notified of the hearing. A telephone hearing was held on June 14, 2017. The claimant, Nicholas L. Schwien, participated. The employer, Captive Plastics, L.L.C., participated through Jon Goularte, Maintenance Manager; and Sara Miller, HR Manager.

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, most recently as a Maintenance Technician, from June 15, 2015, until May 3, 2017, when he was discharged for sexual harassment. On the morning of May 3, 2017, claimant came up behind a female coworker and grabbed her, either on her rear end or between her legs. The employer learned about this after another employee who witnessed the incident reported it. Miller and Goularte both viewed the video of the incident. Goularte testified that the coworker who claimant grabbed appeared shocked. When the employer asked claimant about the incident, he initially reported that he touched the coworker's back. After Miller informed claimant that management had viewed the video, he admitted that he may have pinched the coworker's rear end. The employer maintains an anti-harassment policy. Claimant admits that he may have received such a policy, but he did not read it. Claimant had never been disciplined in the past for sexual harassment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged for disqualifying, job-related misconduct. Benefits are withheld.

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). 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).

Here, claimant admits he touched his coworker on her rear end. He acknowledges this was inadvisable, but he disputes that his conduct warrants immediate discharge. The employer has a duty to maintain a workplace free from all harassment, and employees have an obligation to follow workplace policies designed to ensure the safety and dignity of their coworkers. The employer has established that claimant inappropriately touched a coworker, which is misconduct event without prior warning. Benefits are withheld.

DECISION:

The May 17, 2017 (reference 01) unemployment insurance decision is affirmed. 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.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn