

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TROY N CRIPPS
Claimant

APPEAL NO. 12A-UI-08324-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABM JANITORIAL SERVICES NORTH
Employer

OC: 06/10/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated July 2, 2012, reference 01, which denied unemployment insurance benefits. After due notice was issued, a telephone hearing was held on August 6, 2012. The claimant participated. The employer participated by Ms. Denice Norman, hearing representative, and witnesses Mr. Matt Brewer, night supervisor, and Ms. Karen McDowell, district manager.

ISSUE:

At issue is whether the claimant was discharged for misconduct in connection with his employment.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Troy Cripps was employed by ABM Janitorial Services North from July 29, 2009, until June 7, 2012, when he was suspended and subsequently discharged. Mr. Cripps was employed as a full-time cleaner and was paid by the hour. His immediate supervisor was Matt Brewer.

Mr. Cripps was discharged from his employment based upon an incident that took place on June 7, 2012. Company employees had reported that Mr. Cripps had made an inappropriate statement in public to two female workers, accusing one of the women of passing a sexually transmitted disease. The female employee also alleged that Mr. Cripps had sent a text message suggesting that the individual should "kill herself." Because the allegation appeared to be a clear violation of the company's prohibition against sexual harassment and/or violence in the workplace, the company further investigated the allegations.

Mr. Cripps admitted making the statement and sending a text message.

It is the claimant's position that he made the statement and sent the text message in response to both females beginning to "swear at him" in a dispute about payment for lunch. It is the claimant's further position that it is his belief that one of the individuals transmitted a sexual disease and it is within the claimant's freedom of speech to tell them about it.

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.

Since the claimant was discharged, 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. Conduct serious enough to warrant a discharge of an employee may not necessarily be serious enough to warrant the 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 App. 1992).

In this matter, the claimant was discharged after he admitted to publicly accusing one or both of two female employees of the company of transmitting a sexual disease. The statement was made in public, causing the female employees to complain to the company. It was further alleged that the claimant had also sent a text message suggesting that one of the females should harm themselves. When questioned, the claimant agreed that he had made the

statement and sent the text, but asserted that he had done so because “they started it” by complaining about a lunch debt.

The administrative law judge, after carefully considering the evidence in the record, concludes the claimant was discharged under disqualifying conditions. Mr. Cripps knew or should have known that making public references regarding sexual matters was contrary to the employer’s sexual harassment policy and that sending text messages suggesting that a coworker harm herself would also be contrary to the employer’s interests and standards of behavior that the employer had right to expect of its employees. Unemployment insurance benefits are withheld.

DECISION:

The representative’s decision dated July 2, 2012, reference 01, 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, provided he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw