

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL J CARTER
Claimant

APPEAL NO. 07A-UI-05517-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY HOSPITAL
Employer

**OC: 05/06/07 R: 02
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Michael Carter filed an appeal from a representative's decision dated May 24, 2007, reference 01, which denied benefits based on his separation from Mercy Hospital. After due notice was issued, a hearing was held by telephone on June 14, 2007. Mr. Carter participated personally. The employer participated by Monica Clarkson, Manager, and Patty Steelman, Employee Relations Compliance Coordinator. Exhibits One through Nine were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Carter was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Carter was employed by Mercy Hospital from February 25, 1994 until May 11, 2007. He was last employed full time as a communications secretary. He was discharged after receiving a series of disciplinary actions.

Mr. Carter received a written warning on November 20, 2003 after a female coworker filed a complaint of sexual harassment. The coworker had ended a romantic relationship with him six months prior to the incident. Mr. Carter was giving her a neck rub on November 14 when he slid his hands down her arms and attempted to touch her breasts. He also spoke softly to her in what she considered a sexual tone. Mr. Carter was advised that any further incidents of sexual harassment would result in his termination. He was counseled on February 2, 2005 after he vocalized his displeasure at having to perform a task. He took films to the front desk and stated he had told someone to come downstairs to pick up the films. He made the statement loudly in the presence of patients. He was apparently unhappy because he felt patients should come to him to pick up the films rather than having him bring them up.

Mr. Carter was counseled on April 5, 2005 because he was sending films back that should have been retained for comparison. He was retrained and provided a step-by-step procedure for determining when films were to be returned to the original facility. On July 6, 2006, Mr. Carter became upset and was using profanity in the film room while speaking to a coworker over the telephone. As a result, he was counseled on July 7. Mr. Carter received another written warning on

November 1, 2006 because of an incident that occurred on October 16. He and a coworker were walking up stairs, with Mr. Carter in front, when he questioned the coworker about his request for paid time off. When the coworker did not respond, Mr. Carter turned and kicked in the direction of the coworkers face. His foot came close to actually striking the coworker.

The decision to discharge Mr. Carter was prompted by a complaint from two coworkers on May 4. He had asked a female coworker if she thought a male coworker would die a virgin. The question was overheard by another female coworker. Mr. Carter then asked the other female if she thought her daughter was a virgin. The two coworkers were offended by the questions and filed a complaint. As a result, Mr. Carter was notified of his discharge on May 11, 2007.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Carter developed a pattern and practice of disregarding the best interests of his employer. He knew or should have known that his actions of November 14, 2003 were inappropriate. There was no reason for his hands to be in the area of the coworker's breasts if he was giving a neck rub. His conduct had the potential of subjecting the employer to legal liability for sexual harassment. He vocalized his displeasure at having to bring films to the patient area in February of 2005. His conduct portrayed the employer in a negative light in the presence of patients. In July of 2006, he used profanity in anger when speaking with a coworker. In October of 2006, he came close to kicking a coworker in the face when the coworker failed to respond to a question. The coworker could have been injured by his actions.

Based on the warnings and counselings he received, Mr. Carter was on notice that he was in danger of losing his job because of his interactions with coworkers and his angry outbursts. In spite of having a prior warning for violation of the employer's sexual harassment policy, Mr. Carter engaged in an inappropriate conversation relating to sex while at work on May 4. Questions of whether one is or is not a virgin is not an appropriate workplace topic. The conduct of May 4 was a relatively minor act of misconduct. However, the combination of this act and his prior acts is sufficient to establish a substantial disregard of the standards of behavior the employer had the right to expect. Misconduct has been alleged as the reason for discharge and misconduct has been established by the evidence. Accordingly, benefits are denied.

DECISION:

The representative's decision dated May 24, 2007, reference 01, is hereby affirmed. Mr. Carter was discharged by Mercy Hospital for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw