

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSEPH G ENLOE**  
Claimant

**APPEAL NO. 07A-UI-00642-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FLYING J INC**  
Employer

**OC: 01/08/06 R: 02  
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Flying J, Inc. (employer) appealed a representative's January 3, 2007 decision (reference 04) that concluded Joseph G. Enloe (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 5, 2007. The claimant participated in the hearing. Lesley Buhler, a representative with TALX, appeared on the employer's behalf. Larry Cushatt, the facility manager, testified for the employer. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on February 1, 2006. The claimant worked as a full-time maintenance employee. Cushatt supervised the claimant.

When the claimant began working, he received a copy of the employer's handbook. Even though the claimant did not read the entire handbook, he understood employees could not sexually harass other employees at work.

A female employee, who the claimant considered a friend at work, complained to local law enforcement officials that the claimant sexually harassed her at work. The employer knew nothing about the employee's complaint until the claimant was arrested at work in early September. The employer talked to the female employee, who indicated the claimant asked for sexual favors from her at work. The claimant denied he had conducted himself in such a manner.

On September 6, 2006, the employer discharged the claimant for violating the employer's sexual harassment policy. Eventually all the sexual harassment charges against the claimant were dropped by the police.

The claimant initially established a claim for benefits during the week of January 8, 2006. The claimant reopened his claim the week of December 3, 2006.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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 Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer had business reasons for discharging the claimant. The facts do not, however, establish that the claimant sexually harassed a female co-worker. The fact that these charges were dropped is an indication the claimant did not violate the employer's sexual harassment policy. Finally, the claimant's testimony must be given more weight than the employer's reliance on unsupported hearsay information. The evidence does not show that the claimant committed work-connected misconduct. As of December 3, 2006, the claimant is qualified to receive unemployment insurance benefits.

The employer is not a base period employer during this claim year (January 8, 2006, through January 6, 2007). During this benefit year, the employer's account will not be charged.

**DECISION:**

The representative's January 3, 2007 decision (reference 04) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of December 3, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. During this benefit year, the employer's account will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw