

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RANDY R EISCHEID
Claimant

APPEAL NO. 13A-UI-10558-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ST ANTHONY REGIONAL HOSPITAL
Employer

OC: 08/18/13
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Randy Eischeid, filed an appeal from a decision dated September 12, 2013, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on October 9, 2013. The claimant participated on his own behalf. The employer, St. Anthony Regional Hospital (St. Anthony) participated by Director of Human Resources Ann Fitzpatrick.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Randy Eischeid was employed by St. Anthony from April 29, 2013 until August 22, 2013 as a full-time housekeeper. During the course of his employment Mr. Eischeid received verbal counselings from his supervisor. He would stare at women while he was waiting at the time clock and when confronted about it said that “all men stare at women.” Another counseling was for an inappropriate “joke” when he put “for a good time call Megan” on a bottle and left it in a planter in the atrium. A third incident involved making a comment about a woman doctor whose bikes shorts were “really tight.”

On August 19, 2013, he was walking with a female co-worker and asked her “did you get laid?” when she mentioned going to a party. She is Hispanic and did not entirely understand the reference until another co-worker explained it to her. At that time she confronted Mr. Eischeid and informed him she did not like the comment.

This final incident was witnessed by others and they all reported it to their supervisor on the night shift. They were asked to write statements, which they did, and these were submitted to the day shift supervisor. The day shift supervisor contacted Director of Facilities Larry Blanchard who then brought the matter to Director of Human Resources Anne Fitzpatrick.

Ms. Fitzpatrick interviewed the witness, including Mr. Eischeid, on August 20, 2013. The claimant maintained he had not said the comment, only asked "did it get late?" in reference to the mention of the party.

The results were discussed with the two supervisors and Mr. Blanchard. A review of the personnel file and previous warnings was done and the decision made to discharge for violating the employer's harassment policy. He was informed of the discharge in person on August 22, 2013.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant has a history of making inappropriate remarks to and about women, including "jokes" which included making a lewd statement on a bottle and leaving it where it could have been found by anyone. The claimant's denial of the final incident lacks credibility. The administrative law judge found Mr. Eischeid's testimony to be too confusing and contradictory to be given any weight. His acknowledgement of the prior incidents weighs against his claim of innocence for the final event.

The record establishes the claimant was discharged for creating a hostile work environment for female co-workers and violating the employer's policy against sexual harassment. This is a violation of the duties and responsibilities the employer has the right to expect of an employee.

The employer has the obligation to provide a safe and harassment-free work environment for all employees and the claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of September 12, 2013, reference 01, is affirmed. Randy Eischeid is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css