

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

GERALD LEPPERT
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EAGLE WINDOW & DOOR INC
ATTN AMY TURNER
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DUBUQUE IA 52004

Appeal Number: 06A-UI-05036-BT
OC: 03/26/06 R: 04
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96 5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Gerald Leppert (claimant) appealed an unemployment insurance decision dated May 4, 2006, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from employment with Eagle Window & Door, Inc. (employer) for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 25, 2006. The claimant participated in the hearing. The employer participated through Amy Turner, Human Resources Representative.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time assembler from May 18, 1998 through April 18, 2006, when he was discharged for violation of the employer's zero tolerance harassment policy. The employer's work rule number one prohibits harassment of any employee on the job, for any reason, sex, race, color, physical attributes, age, national origin or any other reason. On April 11, 2006, the claimant was standing with co-employees waiting to punch out on the time clock when he made inappropriate comments to a female co-worker. The claimant told the co-worker that she needed to be a "team player" and "fuck all of us." He went on to state that he has an 18 year old son that he wanted "to have a go at her, but Dad gets first chance." He said that if the people in the line who were "to have a go at her, didn't like her, they could go ahead and lay Melinda next to her and they could do her instead."

Another employee immediately reported the comments to the employer, who conducted an investigation on the following day. The female co-employee made a statement in front of at least two other witnesses which confirmed similar statements made by the claimant. She reported the claimant said, "We are all waiting to fuck you, be a team player, lay down spread your legs and we will all have it." The female co-worker also reported the claimant made comments about his son and about Melinda. She reported this was not the first time the claimant made comments as he had previously said, "nice ass" and "you're hot." The employee who initially reported the comments further elaborated what was said in a statement that he signed in front of witnesses. When the claimant was questioned, he initially said that he does not remember what he said the day before. He denied making inappropriate comments but then asked "why does one comment make this a big deal." The claimant admitted he told Misty that she has a "nice ass" but stated that she "took it as a compliment." The claimant was advised he was being suspended and said, "Just give me the suspension and forget about it." He was discharged after the three-day suspension.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 claimant was discharged for violation of the employer's zero tolerance harassment policy. Although he denies making the statements to his female co-worker on April 11, 2006, he does admit he has told the co-worker she has a nice ass. The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case by a preponderance of the evidence and benefits are denied.

DECISION:

The unemployment insurance decision dated May 4, 2006, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

sdb/kkf