

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ROBBIE L KRANTZ
Claimant

APPEAL NO: 18A-UI-05392-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AML RIVERSIDE LLC
Employer

OC: 04/08/18
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 27, 2018, reference 03, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 30, 2018. The claimant participated in the hearing with Attorney Jerry Schnurr III. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Department's Exhibit D-1 and Claimant's Exhibits One through Four were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last known address of record on April 27, 2018. The claimant received the decision May 1, 2018. She took the decision to her attorney, Mr. Schnurr, May 2, 2018. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by May 7, 2018. The appeal was not filed until May 8, 2018, which is after the date noticed on the disqualification decision. Mr. Schnurr was out of the office. He filed the appeal after returning to the office and going through his stack of mail. Under these circumstances, the administrative law judge finds the claimant's appeal is timely.

The claimant was employed as a full-time production worker for AML Riverside, LLC from May 29, 2017 to April 10, 2018. The employer notified her she was being discharged for creating a hostile work environment.

Approximately one month prior to the claimant's separation, a male co-worker showed her a pornographic video and the claimant complained. Production Manager Dave Baardson told her she was "on the verge of borderline harassment." The claimant went to human resources and asked what she said or did to be considered close to harassment and was told the harassment

occurred when the claimant returned in February 2018 from breaking her leg in a non-work related incident. The employer did not provide the claimant with any specific information about when she allegedly harassed a co-worker. The claimant never received any warnings about harassing any employees but her extended 90 regular working days employee evaluation form, dated April 10, 2018, stated the employer had a discussion with the claimant March 7, 2018, about her complaining and that “her behavior was borderline harassment” (Claimant’s Exhibit Three). The April 10, 2018, review indicated that since that time other team members said the claimant was constantly complaining about her job and the overtime required and other employees stated it was difficult to work with the claimant (Employer’s Exhibit Three). The employer terminated the claimant’s employment April 10, 2018, for creating a hostile work environment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep’t of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *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 substantial and 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).

When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant does not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. The employer has not met its burden of proof. Therefore, benefits must be allowed.

DECISION:

The April 27, 2018, reference 03, decision is reversed. The claimant's appeal is timely. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn