

**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**

**WILLIAM J CZAJA
312 BROADWAY
MINDEN IA 51553**

**CLARITUS
13232 "C" ST
OMAHA NE 68144**

**Appeal Number: 04A-UI-07784-CT
OC: 06/13/04 R: 01
Claimant: Respondent (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:

Claritus filed an appeal from a representative's decision dated July 8, 2004, reference 02, which held that no disqualification would be imposed regarding William Czaja's separation from employment. After due notice was issued, a hearing was held by telephone on August 18, 2004. Mr. Czaja participated personally. The employer participated by David Herbert, President.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Czaja was employed by Claritus from July 6, 1999 until June 17, 2004 as a full-time service technician. The employer sells and services mailing equipment. Mr. Czaja was discharged after a customer complained about him.

On or about June 3, 2004, the employer received a complaint from Allegiant Hospital concerning Mr. Czaja's conduct. The hospital complained that he was making comments of a sexual nature and standing too close to employees. A representative of the employer spoke to the hospital's human resources director on June 11 but did not obtain any specifics as to what Mr. Czaja had said that was considered to be sexual in nature. The only incident Mr. Czaja could recall happening at the hospital was when a female employee called security after Mr. Czaja asked for her photo identification. He had asked for her identification as a sample to use when working on a piece of equipment. Mr. Czaja immediately reported the incident to his supervisor.

Mr. Czaja serviced numerous other accounts and had worked at the hospital on numerous occasions during his almost five years with Claritus. The employer was not aware of any other complaints from customers other than the one of June 3. In January of 2003, a Claritus employee had complained that Mr. Czaja had made an inappropriate comment of a sexual nature to her. The two were discussing dying hair and Mr. Czaja commented that he was "just a girl" because he colored his hair. He received a written warning as a result of the complaint. He had not been disciplined for any other matters during the course of his employment.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Czaja was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Czaja was discharged because of a complaint received from one of the employer's customers. It was alleged that he was making sexual comments to hospital employees, an allegation denied by Mr. Czaja under oath. Without knowing what he was alleged to have said, the administrative law judge cannot independently determine if the comments were inappropriate. Based on the foregoing, the administrative law judge concludes that the employer has failed to establish that Mr. Czaja engaged in any inappropriate conduct at the hospital. Mr. Czaja had been with the employer almost five years and had serviced numerous other accounts during that time frame. If he was the type of individual to make sexually inappropriate remarks, one would have expected more than one complaint from customers over a period of almost five years. The fact that there were no other complaints lends credence to his contention that he did not make any inappropriate comments at Allegiant Hospital.

The administrative law judge appreciates that the employer had to discharge Mr. Czaja after the hospital indicated he was no longer welcome there. However, this is not sufficient to establish disqualifying misconduct. The evidence of record failed to establish any conduct on Mr. Czaja's part, which would constitute misconduct within the meaning of the law. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa

Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated July 8, 2004, reference 02, is hereby affirmed. Mr. Czaja was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/kjf