

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

JASON V MARLETTE	:	
	:	HEARING NUMBER: 21B-UI-07482
Claimant	:	
	:	
and	:	EMPLOYMENT APPEAL BOARD
	:	DECISION
CAMBREX CHARLES CITY INC	:	
	:	
Employer	:	

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Claimant, Jason Marlette, worked for Cambrex Charles City, Inc. from April 6, 2005 through January 21, 2021 under the supervision of Tricia Adams as a full-time Pharma I lead operator. The Employer has a written policy prohibiting harassment and unwelcome touching in the workplace, i.e., threatening violence in the workplace, discourtesy to fellow employees, etc., for which the Claimant had knowledge of this policy. The policy also provides that an employee may be discharged from employment for its violation.

On January 9, 2021, several employees were in the control room of Pharma I where job assignments were being discussed when one of the operators left the area in frustration. The operator complained to the Claimant about Ms. Adams. The Claimant then went into Ms. Adams' office, shut the door behind him as he stood over her angrily confronting her about the complaint. Ms. Adams stood up to face him at which time the Claimant poked her in the shoulder several times, pushing her back into the corner. Ms. Adams felt

threatened and demanded that he stop his behavior. The two of them continued their conversation in an argumentative tone. She later reported the incident to her production supervisor, who in turn reported the incident to Brittany Sickels, the Human Resources Director, and Scott Kendal, the Director of Operations.

An investigation ensued. When the Employer questioned the Claimant about the matter, he didn't deny it. In fact, admitted he was angry and that he was role-playing to make a point. He believed Ms. Adams was 'bad' at her job, and that it was his responsibility to bring it to her attention. The Claimant indicated he never had any problems with the male supervisors.

The Employer called the Claimant by phone and discharged him on January 21, 2021 for violating the Employer's Code of Conduct, specifically, the anti-harassment policy.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2019) provides:

Discharge for Misconduct. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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 Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665, (Iowa 2000) (quoting Reigelsberger v. Employment Appeal Board, 500 N.W.2d 64, 66 (Iowa 1993).

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 substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 NW2d 661 (Iowa 2000).

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We attribute more weight to the Employer's version of events. In the instant case, there is no dispute the Claimant made physical contact with Ms. Adams, a person in leadership, and most importantly, his immediate supervisor. There is nothing in the record to establish she invited such behavior upon herself. Although the Claimant denies that his behavior was anything but harmless role-playing, it is clear Ms. Adams felt otherwise given the complaint she registered with the Employer. His repeated pushy, finger-poking was the type of unwanted and discourteous behavior referenced in the Employer's Code of Conduct. Any reasonable person would find his behavior intimidating, if not an attempt to intimidate, as well as abrasively rude. It was not wholly unreasonable for the Employer to also surmise his proclamation that 'she was bad' and that he never had any problems with male supervisors, was a gender slur against Ms. Adams. In viewing this record as a whole, we find the Employer satisfied their burden of proving the Claimant violated the Employer's anti-harassment policy and was justified in terminating him.

DECISION:

The administrative law judge's decision dated June 2, 2021 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for disqualifying misconduct. Accordingly, he is denied benefits until such time he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. See, Iowa Code section 96.5(2)"a".

James M. Strohman

Myron R. Linn

DISSENTING OPINION OF ASHLEY R. KOOPMANS:

I respectfully dissent from the decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

Ashley R. Koopmans

AMG/fnv