

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TYLER J PEASE**  
Claimant

**FLINT HILLS RESOURCES MENLO LLC**  
Employer

**APPEAL 21A-UI-02034-DZ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/18/20**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Tyler J Pease, the claimant/appellant, filed an appeal from the December 16, 2020, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on February 26, 2021. Mr. Pease participated and testified. The employer participated through Teresa Wadsworth, human resources leader, Chuck Murdock, supervisor, and Tanis Minters, hearing representative. Employer's Exhibits 1 and 2 were admitted into evidence.

**ISSUE:**

Was Mr. Pease discharged for misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Pease began working for the employer on March 21, 2011. He worked as a full-time production operator. His last day at work was October 17, 2020. Mr. Pease was separated from employment on October 22, 2020.

The employer's Code of Conduct, in relevant part, prohibits harassment based on gender and sexual orientation, perceived gender or sexual orientation or association with individuals who are perceived to be a member of a protected group. The policy specifically prohibits "verbal conduct such as epithets; slurs; derogatory and/or sexually-oriented jokes or comments; discussion or inquiries about one's own or someone else's sexual activities; or unwanted sexual advances, propositions, flirtations, invitations or comments." Employer's Exhibit 1. The policy provides that harassment includes "...any verbal or other conduct that is offensive, bullying, intimidating or disparaging to any individual or group and is based on that's individual's including in a legally protected group." *Id.* The policy applies to "...all persons involved in the operation of the company..." *Id.* Mr. Pease acknowledged receiving the policy on his hire date. Mr. Pease also had access to the policy on his work desktop.

On October 21, 2020, Ms. Wadsworth received an anonymous complaint involving Mr. Pease. The complaint alleged that on October 15 Mr. Pease and another employee, Troy Jones, were having a conversation in the break room. Five other employees were also in the break room. Mr. Pease and Mr. Jones' conversation included sexually oriented jokes and comments about sexual activity, including Mr. Jones asking if a pregnant woman swallowed semen and the fetus liked it would the fetus be gay. A female employee entered the break room. After being encouraged by Mr. Jones to do so, Mr. Pease asked the female employee if her husband sucked the semen out of her vagina after intercourse. Mr. Jones also asked the female employee about sexual activity. Mr. Pease and Mr. Jones simulated the behaviors about which they asked the female.

Ms. Wadsworth also learned about an incident that happened on October 17. That day Mr. Pease, Mr. Young and two other employees were in the control room. Mr. Jones was having a video conversation with his wife. Mr. Jones began talking about his wife's breast. Mr. Pease joined in and also began discussing Mr. Jones' wife's breasts.

Ms. Wadsworth investigated the allegations. She spoke with Mr. Pease, Mr. Jones, the five employees who were present in the break room and the two employees who were present in the control room. Mr. Pease admitted to making the statements in the break room and in the control room. Employer's Exhibit 2. Mr. Pease admitted that the conversation in the break room was inappropriate for work. All five other employees who were present in the break room confirmed that Mr. Pease had made the statements in the break room.

Mr. Pease had no prior disciplinary record. The employer decided to terminate Mr. Pease's employment because of the nature of the conversation, the language used, the fact that the language/question was directed at another employee, the fact that Mr. Pease's statements upset another employee and because Mr. Pease had violated the employer's policy. On October 22, Ms. Wadsworth and Mr. Murdock informed Mr. Pease via phone that his employment was terminated.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes Mr. Pease was discharged from employment due to job-related misconduct.

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 of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has presented credible evidence that Mr. Pease violated its policy by his vulgar, unsophisticated and crude comments. Even Mr. Pease himself admits that the conversations and his question to the female employee were inappropriate for work. Mr. Pease attempts to characterize the conversation and his comments as being about politics, gender and sexual orientation. It was not. Despite being aware of the employer's policy, Mr. Pease made gross comments in violation of the employer's policy, in the presence of multiple other employees and directed it to a specific employee. This is disqualifying misconduct. Benefits are denied.

**DECISION:**

The December 16, 2020, (reference 01) unemployment insurance decision is affirmed. Mr. Pease was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



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Daniel Zeno  
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March 5, 2021  
Decision Dated and Mailed

dz/kmj