IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JIMIE D SYFERT
Claimant

PINNACLE FOODS GROUP
Employer

APPEAL NO: 08A-UI-02440-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/03/08 R: 04
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Pinnacle Foods Group (employer) appealed a representative's March 6, 2008 decision (reference 03) that concluded Jimie Syfert (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 26, 2008. The claimant participated personally. The employer participated by Wilda Lampe, Human Resources Specialist.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

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 hired on July 2, 2007, as a full-time probationary production technician. The claimant signed for receipt of the employer's rules when he was hired. The claimant disclosed previous medical issues with his back at the time he was hired. In September 2007, a co-worker dropped a plexiglass lid on the claimant's hand. The incident went on the claimant's record but the co-worker continued to work for the employer. The employer did not issue any warnings to the claimant during his employment.

The employer had a "Current Best Approach" training manual for each machine and each machine required as much as five-weeks training time. The employer directed the claimant to work on a machine new to the claimant on or about November 4, 2007. The employer did not give the claimant a Current Best Approach training manual for that machine. A co-worker showed the claimant how to start it, clean it and set unformed boxes on it. On November 5, 2007, the machine was jammed due to hot glue. He pushed the jog machine button repeatedly but the jam did not correct itself. The claimant pulled on the corrugated box in the machine. The box came apart and the claimant fell back. He bounced off an I-beam and hit his tailbone on the floor.

The claimant was transported by ambulance to the emergency room. On November 6, 2007, the employer terminated the claimant for violating the portion of the employer's rules that state "Acting willingly, negligently or recklessly thereby creating an unsafe condition and causing harm to yourself or other employees and/or exhibiting any unsafe behaviors that contribute and result in an injury to yourself or other employee". He was terminated three days prior to the end of his probationary period.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The claimant was injured at work because he did not have sufficient training on the machine and the employer did not provide him with the machine's training manual. The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's March 6, 2008 decision (reference 03) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

_____
Beth A. Scheetz
Administrative Law Judge

_____
Decision Dated and Mailed

bas/pjs