IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

SAMUEL L LOCKETT
Claimant

D OF S FOODS INC
MCDONALD'S #11386
Employer

APPEAL NO. 11A-UI-14149-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09/25/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Samuel Lockett (claimant) appealed a representative's October 19, 2011 decision (reference 04) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with D of S Foods (employer) for conduct not in the best interest of the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 22, 2011. The claimant participated personally. The employer participated by Karla Shedd, Human Resources Generalist.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 December 30, 2009, as a full-time crew person. The employer issued the claimant written warnings for attendance on July 17 and 19, 2011, after the claimant had been given a leave of absence to care for his sick father. The claimant asked to have a conversation with the employer regarding his absences. On August 13, 2011, the claimant informed the employer that a previous manager had granted him time off. The employer notified the claimant that further infractions could result in termination from employment.

The claimant was on probation and required to carry his cellular telephone with him. If he was selected for a random drug urinalysis, he had one hour to comply. The employer understood this. On August 31, 2011, the claimant immediately informed the employer that his probation officer was requiring a urinalysis. The employer issued the claimant a written warning before he left for leaving work early and told the claimant that the manager would contact him before the claimant could return to work. The employer never called the claimant. After one week the claimant called the employer to inquire about his job. The employer told him he was terminated.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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 employer testified at the hearing that the claimant properly reported his last absence based on the circumstances. The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the claimant's testimony to be more credible because the claimant was an eye witnesses to the events for which he was terminated. The employer's witness was not an eye witness. The employer did not provide sufficient evidence of job-related misconduct. Benefits are allowed.

DECISION:

The representative's October 19, 2011 decision (reference 04) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs