IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

SCOTT MCCLOUD
Claimant

ARAMARK UNIFORM & CAREER APPAREL
Employer

APPEAL NO: 12A-UI-06344-ET

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04-29-12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 22, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 22, 2012. The claimant participated in the hearing with Union Steward Ray Rosalez. Pam Morrison, general manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time route sales representative for Aramark Uniform & Apparel from February 14, 2000 to May 7, 2012. During the last week of February or the first week of March 2012, the claimant was servicing a Wednesday account. The customer had told the claimant he could consume anything on the break room table, such as doughnuts or brownies employees brought in or outdated vending machine items. While the claimant was there during the last week of February/first week of March 2012, he took a brownie and the small energy drinks. The customer met the claimant at his truck and asked him if he took the energy drinks and the claimant stated he did. The customer asked for them back and the claimant apologized for mistakenly believing the energy drinks were for whoever wanted them. The customer did not appear to be upset and the following Wednesday he gave the claimant a bottle of the energy drink to sample. The energy drinks retail for $3.47 each at General Nutrition Center. On April 26, 2012, the employer became aware of the situation. The employer testified the customer stated he had the claimant on video taking the energy drinks and that the claimant denied taking the energy drink. The claimant's route had been changed by then for unrelated reasons and he no longer serviced that customer, but the customer told another route sales representative and he contacted the employer about the incident. The employer never saw the video tape of the situation. On April 26, 2012, the employer met with the claimant about the allegation and stated he was being accused of theft from the customer. The claimant explained the situation and told the employer he believed he was allowed to help himself. The employer

stated the value of the drinks was $70.00 to $100.00 and suspended the claimant pending further investigation. The employer met with the claimant May 7, 2012, to discuss its findings and terminated the claimant's employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying misconduct. 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 N.W.2d 661, 665 (Iowa 2000). The claimant's first-hand testimony regarding the incident with the customer in late February/early March 2012, was credible and persuasive. He was told by the customer he could have anything on the break room table and mistakenly believed that included the three energy drinks he took. The customer met him at his truck and told him those were not there for the taking and the claimant apologized and returned the energy drinks. If the customer believed the claimant stole the

energy drinks, it is curious that it did not notify the employer at the time it occurred, instead waiting nearly two months to report the incident to another route sales representative, or provide the video evidence it claimed to have to the employer. Under these circumstances, the administrative law judge concludes the employer has not met its burden of proving disqualifying job misconduct or that the claimant's actions rise to the level of misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The May 22, 2012, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder
Administrative Law Judge

_____
Decision Dated and Mailed

je/kjw