IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DESIRE BYIRINGIRO
Claimant

WEST SIDE TRANSPORT INC
Employer

APPEAL NO. 15A-UI-02987-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/16/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Desire Byiringiro (claimant) appealed a representative's March 2, 2015 (reference 07) decision that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with West Side Transport (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 20, 2015. The claimant participated personally. The employer participated by Amy Jordon, Director of Human Resources, and Norman Harlan, Truck Driver.

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 January 30, 2015 as a full-time student truck driver. The claimant signed for receipt of the employer's handbook on January 28, 2015 and the Federal Motor Carrier Safety Regulations Pocketbook on January 29, 2015. On February 2, 2015, the employer put the claimant in a truck with a trainer. The claimant did not have enough food, clothing, and toiletries to be on the road after February 6, 2015. He asked to be transported back home to Cedar Rapids, Iowa. The trainer had home time and the claimant thought he was going to have home time, also.

On February 9, 2015, the claimant went out again with a trainer. On February 12, 2015, the trainer was waiting to pick up the claimant at the agreed upon location in Dayton, Ohio but the claimant was not there because the claimant was still on central time, rather than eastern time. The trainer waited for thirty minutes and then called the claimant. The trainer went on without the claimant because he would be late getting the load to Kentucky.

After the trainer dropped the load in Kentucky, the employer told the trainer to return to Dayton, Ohio. The trainer called the claimant to say he was on his way to Dayton, Ohio to retrieve him. The trainer thought the claimant said he had been drinking alcohol and reported this to the employer. The claimant had not been drinking alcohol. The employer told the trainer that,

according to regulations, the claimant could not be in the truck and the trainer should not get the claimant. The employer attempted to reach the claimant but the call was dropped. The employer assumed the claimant hung up on the employer. The claimant returned the call and the employer terminated the claimant.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv., 275 N.W.2d 445, 448 (Iowa 1979).

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).

An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as employer had not previously warned claimant about any of the issues leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. In this case the claimant speaks with an accent and the trainer may not have understood what the claimant said. The claimant provided a witness who testified he had not been drinking. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's March 2, 2015 (reference 07) decision 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

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