IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ANTHONY N PEREZ
Claimant

PER MAR SECURITY & RESEARCH CORP
Employer

APPEAL NO. 11A-UI-07606-H2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04-24-11
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 1, 2011, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on July 6, 2011. The claimant did participate. The employer did participate through Julie Hime, human resources specialist.

ISSUE:

Was the claimant discharged due to job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a security officer, full-time, beginning May 24, 2010, through March 9, 2011, when he was discharged.

The claimant was removed from two permanent job sites—the last on March 8, due to the employer's clients complaining about his behavior on the job site. When his supervisor, Nick, told him he was being removed from the Menards Store, he also told the claimant that he had no more work for him. At no time did Nick offer the claimant an assignment in West Branch, nor did Nick ever tell him that he was being placed in a "floater pool" where he would be called for additional assignments. The claimant called Nick back two weeks later and left him a message asking if there were any other assignments for him, but Nick never called him back.

REASONING AND CONCLUSIONS OF LAW:

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

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). 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. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

The administrative law judge does not believe the claimant voluntarily quit. There would have been no reason for him to try and contact Nick to get another assignment if he had intended to quit. The employer's evidence does not establish that the claimant was ever told about a "floater pool" or that he was ever offered any assignment in West Branch. The claimant was never called back by Nick and was not offered any more work after he was taken off the Menard account on March 8. Under the employer's own policy, he was not at the correct stage for discharge because he only had two prior write ups, thus, the administrative law judge concludes that he was not discharged for job-connected misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The June 1, 2011 (reference 02) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

_____
Teresa K. Hillary
Administrative Law Judge

_____
Decision Dated and Mailed

tkh/kjw