IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

SHAWN LENGUADORO
Claimant

CASEYS MARKETING COMPANY
Employer

APPEAL NO: 15A-UI-06192-JE-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/03/15
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 18, 2015, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 13, 2015. The claimant participated in the hearing. Caleb Woods, Area Supervisor and Weber, Unemployment Insurance Consultant, 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 store manager for Casey's from November 8, 2012 to April 27, 2015. The claimant was previously a store manager for Kum and Go until Casey's purchased the store the claimant worked at and hired the claimant as store manager in November 2012. He was discharged for failing to meet the employer's expectations.

On March 31, 2015, Area Supervisor Caleb Woods went to the store for a routine audit and also because he had received information indicating a new employee was tardy several times without the claimant taking any corrective action against her. The claimant was not in the store that day and Mr. Woods terminated the employee with the record of tardiness during the first 90 days of her employment. He scheduled a meeting with the claimant April 1, 2015, outside the store, and issued him a verbal written warning for failing to hold employees accountable, having a dirty store and cluttered office, not performing new employee orientation, and failing to do the ordering for the store but instead delegating that task to the second assistant manager. Mr. Woods told the claimant the consequences of failing to improve his performance could be up to and including termination.

On April 27, 2015, Mr. Woods went to the store and found the same issues as he discussed with the claimant April 1, 2015. The claimant was not at the store because he had taken a day of vacation. He had requested the day off on his computer and it remained on his computer for

several days until one day, shortly before his separation, it was gone from his computer. Consequently, the claimant thought Mr. Woods had approved his day off and that is why it was not showing up on his computer anymore. He was not aware he was also supposed to send Mr. Woods an email requesting the time off or that Mr. Woods was admittedly "frustrated" when he arrived at the store April 27, 2015, and learned the claimant had taken the day off.

While at the store April 27, 2015, Mr. Woods observed the store was still dirty and the office was cluttered. Mr. Woods watched the store's video surveillance system and observed the second assistant manager still doing the ordering as well as the new employee orientation. He did not see any improvements in the store since his meeting with the claimant April 1, 2015, and consequently, because he lost confidence in the claimant's ability to effectively manage the store or the team, he notified the claimant his employment was terminated April 27, 2015.

The claimant testified he was at another location taking a test required by the employer March 31, 2015, and that is why he was not at the store for Mr. Woods' visit that day. The claimant acknowledges that a new employee was tardy approximately three times during her probationary period and he did not issue her a verbal or written warning because she always called to tell him she would be a few minutes late.

After the claimant met with Mr. Woods April 1, 2015, he cleaned his office the next day and tried to maintain a cleaner and less cluttered office after that date but stated that the office was messy on Mondays because that was truck day and things got put in the office but not organized and put away until the following day. The claimant had also been on vacation April 24 and was off work April 25 and 26, 2015, and did not believe all of the clutter was attributable to him as the second assistant manager also used the office. With regard to the cleanliness of the store, the claimant stated the employees cleaned daily and one time per week did a "deep cleaning."

The store also lost seven employees between March and April 2015 and as a result there was a great deal of training to do. Some of the new employees were high school students who were not available to be trained except on nights and weekends when the claimant was not scheduled to work. Because the store needed immediate help, the new employees needed to be trained as soon as possible so the claimant acknowledges he asked the second assistant manager to help out with training and orientation as she had worked with him for five years and he felt comfortable delegating that duty to her when he was not scheduled to work.

The claimant agrees he was not doing the ordering until confronted about that issue by Mr. Woods April 1, 2015. Following that meeting, the first week of April 2015, the claimant reacquainted himself with ordering for the cooler and freezer; the second week of April 2015, he incorporated the ordering of the items from the store shelves; the fourth week of April 2015, he did not do the ordering because an employee did not show up and he performed her duties for her; and the fourth week of April 2015, he was ordering the cooler and freezer items as well as the items from the store shelves; and then his employment was terminated the following Monday, April 27, 2015.

The claimant did not believe his job was in jeopardy as he had not received a written warning and he was performing his job to the best of his ability.

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 § 96.5-2-a provides:

> An individual shall be disqualified for benefits:
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> 2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
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> 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.
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> 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 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).

While the employer cited issues with the claimant's work performance, the claimant rebutted the employer's accusations with reasonable and plausible explanations. After Mr. Woods terminated the new employee for tardiness March 31, 2015, there was no testimony there were other employee disciplinary problems requiring the claimant to take corrective action. Mr. Woods issued the claimant a verbal warning in writing April 1, 2015, discussing the

cleanliness of the store and the cleanliness and clutter in the claimant's office, stating the claimant needed to do new employee orientation and needed to start doing the ordering for the store.

After receiving that warning, the claimant cleaned his office the next day and felt he maintained a standard of neatness and cleanliness in his office with the exception of Mondays which were truck days. The store lost seven employees between March and April and as some of the new employee hires were high school students and were available to work during the claimant's scheduled time off, he did ask the second assistant manager to train and conduct orientation for those employees but he had begun to do orientation for the other new employees. Finally, with regard to the ordering, the claimant also began ordering immediately after meeting with Mr. Woods April 1, 2015. He started with the cooler and freezer ordering and the following week added the store shelf items to the cooler and freezer ordering.

Mr. Woods was admittedly frustrated that the claimant had taken a vacation day April 24, 2015, which may have played a role in his decision to terminate the claimant's employment without first issuing a written warning. While the claimant believed he had followed the correct procedure for requesting time off, Mr. Woods explained he was actually supposed to send him an email detailing the time off needed.

The claimant credibly testified he did not know his job was in jeopardy and was performing his job to the best of his ability. Under these circumstances, the administrative law judge concludes the employer has not met its burden of proving disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The May 18, 2015, reference 01, decision is affirmed. 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

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Decision Dated and Mailed

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