IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DENNIS SCHUMACHER
Claimant

KERRY INC
Employer

APPEAL NO: 15A-UI-03729-ET

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/22/15
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 20, 2015, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 29, 2015. The claimant participated in the hearing. Dawn Rolinson, Senior Production Supervisor, 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 production operator for Kerry Inc. from June 2, 2014 to February 19, 2015. He was discharged following two errors in less than one month.

The claimant was originally working for the employer through Masterson Staffing beginning June 14, 2014. He was hired by the employer December 31, 2014. Consequently, he was on a 90-day probationary period beginning December 31, 2014.

On January 23, 2015, the claimant hand wrote a lot number which resulted in the wrong ingredient being used. The claimant indicated the ingredient was GU054 when it was supposed to be GU045. If an employee hand writes the lot number he is required to get approval from a supervisor or lead person. The claimant asked the lead person and the lead was busy and asked the claimant if it was on the computer and he checked and it was but it was not on the sheet for the next group to handle the product and as a result they skipped the ingredient. If an employee enters the wrong ingredient it shows on the computer as correct and will be used by the next production team. The claimant is unsure why quality control did not catch the error because the handwritten lot number was not accompanied by a supervisor's signature. The error resulted in 3,118 pounds of unusable product and cost the employer $9,466.00. The claimant received an informal counseling January 30, 2015, and was retrained.

On February 16, 2015, production supervisors notified the employer that one of the totes containing 2,400 pounds of yellow cheese sauce was not capped and there was an extra cap found on the table when the employees on the shift following the claimant's shift came in. The product must be capped to prevent contamination. The claimant was the full-time operator in the packaging room at the time and signed off on the finished goods log. The error was caught by the following shift which was then forced to go back and open multiple totes containing the cheese sauce to find which one was missing a cap. If the mistake had not been caught it would have resulted in a customer complaint and the employer would lose 2,400 pounds of product.

The claimant stated there were six caps on the table and two other employees in the packaging room when the claimant arrived. Usually there would not be any loose caps on the table as they should have been on the totes. The regular procedure for the claimant was to have the warehouse weigh the caps and zero them out and then unscrew the caps, set them aside, put the liner in the totes and fill the tote with product before putting the caps and then the lid back on. There are 15 totes per lot. The claimant needed to make up another batch for the lot and believes he forgot to cap one tote and then put the lid on the top of the tote and snapped it into place, at which time the employee can no longer see the caps through the lids. When his shift was over the claimant noticed the cap on the table but because after he lined totes for the next shift, the caps are lined up on the table it did not occur to him that he may have made an error. The claimant agrees he made an error in not double checking the procedure before he put the lids on.

On February 19, 2015, the employer notified the claimant his employment was being terminated. The employer uses a progressive disciplinary policy, as stated in the union contract, which starts with a written verbal warning, written warning, final written warning with suspension and termination. That policy did not cover the claimant because he was a probationary employee.

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:
>
> 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 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).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. IDJS, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. EAB, 423 N.W.2d 211 (Iowa App. 1988).

It was the nature of the claimant's position that if he made a mistake it would be costly for the employer, both in the loss of product and the resulting financial loss. While the claimant did make two errors, there is no evidence either was the result of intentional misconduct. The employer's witness indicated that she believed the claimant was trying to correctly perform his job but "just wasn't getting it" despite the length of time he was there and the retraining provided by the employer.

Under these circumstances, the administrative law judge must conclude the claimant's actions do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The March 20, 2015, 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

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Decision Dated and Mailed

je/pjs