IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

NEIL C KENNETT
Claimant

FLEXSTEEL INDUSTRIES INC
Employer

APPEAL NO. 19A-UI-00191-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/09/18
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Flexsteel Industries (employer) appealed a representative's December 31, 2018, decision (reference 01) that concluded Neil Kennett (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 24, 2019. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Karen Smith, Human Resources Generalist, and Donna Backes, Human Resources Assistant. Exhibit D-1 was received into evidence. The employer offered and Exhibit 1 was received into evidence.

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 October 20, 2014, as a full-time utility steel fabrication. The employer posts Plant Rules. The rules stated, "These acts violate Plant Rules: (6) Insubordination – refusal to obey a supervisor's order or disrespectful conduct toward a supervisor or member of management. Corrective action for violation of these Plant Rules is at the discretion of the Company dependent upon the severity of the situation, and may range from counseling to immediate discharge." The employer issued the claimant four documents regarding his attendance and performance and five suspensions regarding his attendance, performance and falsification of company records. The employer never warned the claimant of further action or that he could be terminated from employment.

In November 2018, the claimant did not receive the holiday pay that he requested. He spoke with the human resources assistant about the issue but she never responded to him. Instead, the human resources assistant told his supervisor that the claimant did not qualify for holiday

pay. The supervisor told the human resources assistant that he told the claimant in a diplomatic way that he did not qualify for holiday pay.

On December 5, 2018, the human resources assistant approached the claimant with insurance paperwork. She asked him to complete the insurance papers and return them the following day. She thought that he looked at her in a sarcastic manner and this made her feel uncomfortable. He asked her, “Are you going to pay me for the two days of holiday pay?” She ignored his question and did not respond because she was certain that his supervisor talked to him. The claimant commented, “I suppose you got that in your bonus check”. She ignored this as well and said, “If you can complete it I would appreciate it”. He said, “I’ll take them home and have my wife fill them out”. She said, “Okay. That’ll work for me”.

The human resources assistant walked away and, later, two supervisors approached the claimant. The two supervisors told the claimant to stop being disrespectful. On December 6, 2018, the employer suspended the claimant. On December 9, 2018, the employer terminated the claimant for insubordination.

The claimant filed for unemployment insurance benefits with an effective date of December 9, 2018. The employer provided the name and number of Karen Smith as the person who would participate in the fact-finding interview on December 27, 2018. The fact finder called Ms. Smith but she was not available. The fact finder left a voice message with the fact finder’s name, number, and the employer’s appeal rights. The employer did not respond to the message. The employer provided some documents for the fact finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual’s wage credits:
>
> 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 disqualification shall continue 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).

Iowa Admin. Code r. 871-24.32(4) provides:

> (4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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). The grounds for discharge listed under a contract of hire are irrelevant to determination of eligibility for Job Service benefits in a misconduct situation. *Hurtado v. Iowa Department of Job Service*, 393 N.W.2d 309 (Iowa 1986).

The employer has a rule that allows it to terminate employees for disrespectful conduct to a supervisor or a member of management. The rule does not define disrespectful conduct or list job titles for members of management. The claimant was terminated because a human resources assistant felt uncomfortable. The employer's grounds for discharge do not determine the claimant's eligibility for unemployment insurance benefits.

Certainly, the employer desires civility between employees but minor offenses or small slights should not deprive a person of a job. 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, the employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as the employer had not previously warned the claimant about any of the issues leading to the separation, it has not met the burden of proof to establish the 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. The employer did not provide sufficient evidence of job-related misconduct or meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's December 31, 2018, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs