IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ANNETA M HUNGERFORD
Claimant

PIONEER HI-BRED INTERNATIONAL INC
Employer

APPEAL NO: 07A-UI-09495-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09/09/07 R: 04
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Anneta M. Hungerford (claimant) appealed a representative's October 5, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Pioneer Hi-Bred International, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 23, 2007. The claimant participated in the hearing. Ben Moore appeared on the employer's behalf and presented testimony from one other witness, Matthew Hauptman. During the hearing, Employer's Exhibit One was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on December 17, 1983 on a temporary basis, and became a full time permanent employee as of October 25, 1984. She worked full time as a management representative and administrative assistant in the employer's Mt. Pleasant, Iowa, hybrid seed corn production facility. Her last day of work was September 8, 2007. The employer discharged her on that date. The reason asserted for the discharge was an alleged inability to get along with coworkers.

A former coworker/administrative assistant had quit employment approximately September 1, 2006. The employer asserted that the reason the former coworker had quit was because of being unable to work with the claimant; the claimant asserted that the former coworker quit for other reasons than problems with the claimant. Regardless, on September 18, 2006, the employer gave the claimant a written warning regarding treatment of people and unprofessional behavior towards others; the warning noted that Mr. Moore, the plant manager, would "monitor your adherence [to the expectation of improved behavior] on an on-going basis. Failure to meet this expectation will result in further disciplinary action up to and including termination of your employment." The claimant signed acknowledgement of receipt of the warning, but attached her own response rebutting the employer's assertions in the warning.

Mr. Moore asserted that he had further counseled the claimant and included a recitation of continued concern in a March 12, 2007 performance evaluation. However, the claimant denied she had had a performance evaluation in 2007 or been provided with any written performance evaluation in 2007; the employer failed to establish the fact of any actual performance evaluation actually provided to the claimant in 2007. A new administrative assistant was hired in December 2006, and the claimant was given charge of her training. Mr. Moore did remark to the claimant that there is only one opportunity to make a good start with the new hire. The claimant believed everything was going fine with her relationship with the new administrative assistant; although she made inquiries of Mr. Moore as to whether she should still be continuing in the role of trainer to the new administrative assistant, he never told her to cease being in the trainer role. No further warnings or discussions of concern were given to her after the September 18, 2006 warning.

The new administrative assistant made some comments to Mr. Hauptman, then agronomist in the office, on or about July 24 that the claimant had declined the assistant's offer to bag some sweet corn for the claimant to take home and had declined the assistant's offer to do some work on the truck scale computer. He did not say anything to the claimant, but passed on the comment to Mr. Moore, who also did not say anything to the claimant. On August 26, the new administrative assistant made a report to Mr. Moore allegedly complaining that she was having difficulty working with the claimant because the claimant was always "butting in" and asking what the assistant was doing, was cutting off the assistant and taking over when the assistant was working with someone else, and had prevented the assistant from helping out with work on the truck scale computer. She further allegedly asserted that the claimant had made a negative comment about the assistant's hair color change. Mr. Moore indicated that the most recent of the issues brought to him by the new administrative assistant was the issue of the comment on the hair color, which reportedly occurred on July 26; he could not explain why there was a further delay until August 26 before the assistant brought her concerns to him.

The claimant's normal practice on her regular computer was to lock the computer workstation when she was away from her desk, following a recommended security procedure. She had not had reason to use the truck scale computer for about two years prior to August 2007, and out of habit, she occasionally also locked the truck scale computer when she left the work area; this did have the effect of making it impossible for other employees to use the truck scale computer while she was away. On August 28, the claimant had locked the truck scale computer when she had gone across the street for some training; when she returned and realized what she had done, she had apologized but had then been told by Mr. Moore that she was not to lock the truck scale computer. To protect personal information when she was leaving that computer, she then would need to log off that computer so someone else could log on. On August 31, the claimant was going to leave for her lunch break and attempted to log off that computer, however, the system would not allow her to log off at that time; therefore to protect the security of her information did proceed to lock the computer for the time she was on lunch.

The claimant denied having any problems working with the new administrative assistant, and denied that other than continuing to act in the role of trainer that she interfered with the assistant performing her functions. She did note that in approximately the last two months the assistant appeared to be spending more time in private discussion with Mr. Hauptman. The claimant denied making any negative remark regarding the assistant's hair color, rather, when the assistant asked her for an opinion on the hair color, she declined to provide an opinion.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code

section 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, 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 is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

Iowa Code section 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 focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
   a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
   b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or

2. Carelessness or negligence of such degree of recurrence as to:
   a. Manifest equal culpability, wrongful intent or evil design; or
   b. Show an intentional and substantial disregard of:
      1. The employer's interest, or
      2. The employee's duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is the inability to get along with coworkers. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, and particularly observing the lack of first-hand testimony from the new administrative assistant with whom the claimant supposedly was not getting along, the administrative law judge concludes that the employer has not established by a preponderance of the evidence that there was any current act of the claimant affirmatively failing to work cooperatively with coworkers. It is notable that almost a full year passed between the prior written warning to the claimant and the termination, with no documentation of any further discussions or counseling despite the employer's purported ongoing continued concerns on issues during that time. To the extent that the claimant's locking of the truck scale computer on August 31 was contrary to the instruction given to her on August 28, under the circumstances of this case, the claimant's action was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence, and was a good faith error in judgment or discretion, as compared to intentional, substantial, or repeated misbehavior. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's October 5, 2007 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/css