IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

KAREN E VAN SICKLE
Claimant

J D CARPENTER COMPANIES INC
HOME OIL STATIONS INC
SHORTSTOP/PROLUBE
Employer

APPEAL NO. 08A-UI-08333-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/20/08 R: 02
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Karen Van Sickle (claimant) appealed a representative's September 9, 2008 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with J.D. Carpenter Companies (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 2, 2008. The claimant participated personally. The employer participated by Samantha Hosfield, Store Director.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

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 March 19, 2007, as a full-time clerk. The claimant signed for receipt of the employer's policies and procedures in early July 2008. The employer did not issue the claimant any warnings during her employment.

The claimant understood the employer would be conducting internal audits of sales to minors. The policy said an employee should look at the identification of a person who appeared to be 40 years old or younger. The claimant understood that she would receive a written warning for a first infraction and be terminated for a second. On July 19, 2008, the employer terminated the claimant for failing to look at the identification of a person who appeared to be younger than 40 years old. The claimant did not remember selling to anyone younger than 40 years old.

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:
>
> 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). 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). Repeated failure to follow an employer’s instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). The employer did not provide sufficient evidence of job-related misconduct. The employer provided one incident of alleged misconduct without supporting documentation of how old the “customer” looked, the wording of the policy the claimant signed and why the progressive disciplinary policy was not followed. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's September 9, 2008 decision (reference 01) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs