IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MARK A COVELL
Claimant

HEARTLAND EMPLOYMENT SERVICES
Employer

APPEAL NO. 17A-UI-08737-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/09/17
Claimant: Appellant (2)

Section 96.5-1-j – Separation from Temporary Employer

STATEMENT OF THE CASE:

Mark Covell (claimant) appealed a representative's August 10, 2017, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits due to his separation from work with Heartland Employment Services (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 13, 2017. The claimant participated personally. The employer was represented by Alyce Smolsky, Hearings Representative, and participated by Leann Miller, Administrator, and Adam Aswegan, Human Resources Director. 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 employer is not a temporary employer. The claimant was hired on September 30, 2014, as a full-time laundry/housekeeping supervisor. The claimant signed for receipt of the employer's handbook on January 7, 2015. On January 23, 2017, the claimant was placed on a performance improvement plan. He successfully completed the plan on March 23, 2017. The employer had other concerns with the claimant's performance but did not issue him any written warnings. On June 5, 2017, the employer provided the claimant with a list of written expectations.

On July 11, 2017, the administrator asked the claimant to speak with his subordinate about the cleanliness of a room. She asked him to document the conversation but the claimant did not hear the administrator's request. Later on July 11, 2017, the administrator sent the claimant an e-mail asking the claimant to have a discussion with the subordinate about why the room was not cleaned properly and turn in written documentation of the meeting by the end of the day. The e-mail was not sent "read receipt requested" and the claimant did not recall ever seeing the e-mail. The claimant took the subordinate to the room and talked to her about the cleanliness.

They talked about the food on the floor. He did not see a reason to issue the subordinate a written warning.

On July 12, 2017, the administrator asked the claimant if he had spoken to the subordinate. He said that he had. The claimant thought the administrator was asking for documentation of a written warning and he did not have it. The administrator placed the claimant on suspension pending investigation and issued him an employee warning notice. The warning notice listed dates the claimant did things incorrectly in the past.

On April 5, 2017, the claimant did not paint door frames. On April 12, 2017, white boards where requested for all rooms. The claimant was not having morning team huddles. These items were not listed as part of the claimant's expectations as a housekeeping/laundry supervisor as stated on June 5, 2017. On May 3, and 5, 2017, the employer requested room readiness checklists. On June 5, 2017, expectations were not signed. These three items were on the June 5, 2017, list of expectations. Lastly, was the request to follow up on the subordinate's cleaning of the room.

The administrator spoke to the subordinate. The subordinate told the administrator that the claimant did not speak to her on July 11, 2017. On July 13, 2017, the employer terminated the claimant for not responding to the employer's requests to speak to the employee.

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).

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). If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The employer had the power to present testimony but chose not to do so. The employer did not provide first-hand testimony at the hearing and, therefore, did not provide sufficient eye witness evidence of job-related misconduct to rebut the claimant's denial of said conduct.

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. It did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's August 10, 2017, decision (reference 01) is reversed. 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