IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

BEI MAWNG Claimant	**APPEAL 21A-UI-04205-DZ-T** **ADMINISTRATIVE LAW JUDGE DECISION**
QUALITY MANUFACTURING CORPORATION Employer	**OC: 12/06/20** **Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-Finding Interview

STATEMENT OF THE CASE:

Quality Manufacturing Corporation, the employer/appellant, filed an appeal from the January 26, 2021, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on April 6, 2021. The employer participated through Sara Dean, human resources specialist. Mr. Mawng did not participate. Employer's Exhibits 1 and 2 were admitted into evidence.

ISSUE:

Was Mr. Mawng discharged for disqualifying job-related misconduct?
Was Mr. Mawng overpaid benefits?
If so, should he repay them?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Mawng began working for the employer on June 18, 2018. He worked as a full-time welder. His employment was terminated on December 3, 2020.

The employer policy provides that employees are responsible for accurately recording the time they have worked and for clocking out if the employee leaves for personal reasons. The employer learned that Mr. Mawng was taking long lunch breaks so Mr. Mawng's manager, Doug Davis, was observing him more closely. On December 1, 2020, Mr. Davis observed Mr. Mawng leaving work at 6:42 p.m. Mr. Mawng swiped his security badge to return at 8:39 p.m. Mr. Davis reported this to human resources.

On December 2, 2020, Ms. Dean asked Mr. Mawng when he clocked in and out and how long he took for lunch on December 1, 2020. Mr. Mawng told Ms. Dean that he left for lunch thirty minutes. Mr. Mawng was suspended that day for violated the employer's timekeeping policy. On December 3, 2020, the employer terminated Mr. Mawng's employment because he lied

about how long he was gone for lunch and for violating the employer's timekeeping policy. Ms. Dean testified that had Mr. Mawng admitted to the employer that he was gone for almost two hours he would have been issued a verbal warning. Mr. Mwang had no prior disciplinary record.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Mwang was discharged from employment for no disqualifying reason.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

An employee is entitled to fair warning that the employer will not tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing what the employee must do in order to preserve their employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning.

In this case, the employer disciplined Mr. Mwang for the timekeeping violation by suspending him on December 2, 2020. Mr. Mwang was on notice, from the employer's policy, that he could be disciplined for violating the timekeeping policy. On December 3, 2020, the employer terminated Mr. Mwang's employment for lying and for violating the employer's timekeeping policy even though the employer had already disciplined him for violating the policy. Inasmuch as the employer had not previously warned Mr. Mwang that his employment could be terminated for lying to the employer (as opposed to the violating the employer's timekeeping policy, for which he had already been disciplined), it has not met the burden of proof to establish that Mr. Mwang acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed.

Because Mr. Mwang is eligible for benefits, the issues of repayment and chargeability are moot.

DECISION:

The January 26, 2021, (reference 01) unemployment insurance decision is affirmed. Mr. Mwang was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

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Daniel Zeno
Administrative Law Judge

April 09, 2021_______________
Decision Dated and Mailed

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