IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

CASEY J THUL
Claimant

EATON CORPORATION
Employer

APPEAL 14A-UI-13059-LT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/30/14
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 16, 2014, (reference 01) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on February 4, 2015. Claimant participated and was represented by Ryan Beattie, Attorney at Law. Employer participated through human resource manager Tracy Jefferson, human resource development program participant David Mancini, environmental health/safety manager Dale Berrick, front line leader Jeff Eivins, and human resources generalist Cathy Cullinan.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a machine operator August 6, 2014, and was separated from employment on November 25, 2014, when he was discharged. He was accused of making a false claim on November 21 that he was injured at work on the shift starting November 19 and ending November 20, 2014. He called to report his absence on November 21 saying he was injured and had not been released by his doctor. On November 19 after work in the morning on the way home he drove his vehicle into a ditch. The accident did not result in injury or vehicle damage. He was able to walk four miles into town to request a tow. The vehicle was operable after it was pulled from the ditch but he rode back to his home in town with the driver. He reported for work on November 20 and injured his foot at the shift start around 11:30 p.m. while moving a pallet jack (mule). He was walking backwards and his foot became pinned between the guard rail and mule. He was wearing steel-toe safety shoes. The impact to the right side of his right foot from the little toe down towards the arch caused a “rip” in the leather and a cut to his foot of about an inch. The skin was broken and bleeding but required no stitches. He continued working and started limping in pain towards the end of the shift. Coworker Matt Studer saw the shoe and noticed claimant limping. He asked claimant about the injury and said he and others had done the same thing. Claimant completed his shift without telling anyone in management about it until the next day. He first saw doctor a couple of hours after he got home

and his mother, a registered nurse, saw it. The morning of November 21 he saw his personal physician, Smith, who referred him to a wound specialist in Fort Dodge. He last saw the doctor on December 18, 2014, and receives wound treatment on a weekly basis.

The employer also accused claimant of refusing to participate in an investigation about the incident. Mancini and Berrick called claimant at 4 p.m. on November 21 on speaker phone and asked him about the work-relatedness of the injury. Claimant said he had to go and did not want to talk about it then because he wanted a separate meeting alone with Berrick. There was no discussion about setting up another conversation. Mancini text messaged claimant to contact his front-line leader Ryan Clausen and fax medical documents. Claimant text messaged Mancini at 4:37 p.m. indicating the incident happened at work but he did not tell the doctor in an attempt to preserve the employer's safety record. He sent a photo of his injured foot with accompanying text that he worked eight hours with his foot like that. The employer also accused claimant of not reporting his injury in a "timely fashion," which is not defined.

Third shift machine operators Sam Rockow and Matt Studer were not presented for testimony. Matt Studer was the only one who claimant talked to and showed his shoe the day of the injury. Charity Hayes, nurse practitioner for the employer, noted a medical excuse from November 21 until the evening shift on November 25. Claimant sent the employer photos of the shoe damage and bloody sock but does not recall when.

REASONING AND CONCLUSIONS OF LAW:

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

When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. Iowa Dep't Human Servs.*, 461 N.W.2d 603, 607 (Iowa Ct. App. 1990). Both the quality and the quantity of the evidence must be evaluated to see whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code § 17A.14 (1). In making the evaluation, the fact-finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. *Schmitz*, 461 N.W.2d at 608. The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976). Mindful of the ruling in *Crosser*, *id.,* and noting that the claimant presented direct, first-hand testimony while the employer relied upon second-hand reports, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer.

Iowa Code § 96.5-2-a provides:

> An individual shall be disqualified for benefits:
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> 2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
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> 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.

Iowa Admin. Code r. 871-24.32(1)a provides:

> Discharge for misconduct.
>
> (1) Definition.
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> 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 the 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.

In an at-will employment environment an employer may discharge an employee for the interpretation or application of the employer's policy or rule, 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. While the claimant would have been wise to report the work injury immediately to a supervisor or manager that isolated incident of poor judgment does not rise to the level of disqualifying separation, especially without a clear policy outlining the employer's expectations. Furthermore, claimant did not refuse to cooperate with an investigation but simply wanted a meeting alone with the safety manager, which was not an unreasonable request or misconduct.

DECISION:

The December 16, 2014, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The benefits claimed and withheld shall be paid, provided he is otherwise eligible.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs