IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

RICHARD GREEN
440 N STEWART
NORTH LIBERTY IA 52317

VICTOR PLASTICS INC
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VICTOR IA 52347

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Appeal Number: 05A-UI-04814-RT
OC: 04/10/05 R: 03
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Richard Green, filed a timely appeal from an unemployment insurance decision dated April 29, 2005, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on May 25, 2005, and also May 31, 2005, with the claimant participating. The claimant was represented by Paul McAndrew, Attorney at Law. Kay Cramer, Human Resources Manager, participated in the hearing for the employer, Victor Plastics, Inc. Employer's Exhibits One and Two, and Claimant's Exhibits A, B, and C, were admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

The hearing began when the record was opened at 9:11 a.m. on May 25, 2005. The hearing was recessed at 9:58 a.m., because it was not completed at that time, and the administrative law judge had to take another hearing at 10:00 a.m. The administrative law judge contacted the parties on Friday, May 27, 2005, and agreed to reconvene the hearing at 1:00 p.m. on May 31, 2005. The record was re-opened at 1:03 p.m., and closed, and the hearing completed, at 1:41 p.m.

FINDINGS OF FACT:

Having heard the testimony of the witnesses, and having examined all the evidence in the record, including Employer's Exhibits One and Two, and Claimant's Exhibits A, B, and C, the administrative law judge finds: The claimant was employed by the employer as a full-time machine operator from August 8, 2003, until he was discharged on April 10, 2005. The claimant was discharged for allegedly sitting on a table on April 3, 2005, after being instructed not to do so. On that day, Paul Kelm, Process Tester, instructed the claimant not to sit on the table. The claimant had not been sitting on the table, but nevertheless Mr. Kelm had told him not to sit on the table. The claimant did not do so, although other employees believed that they had observed the claimant doing so and signed statements to that effect at Employer's Exhibit One. The claimant was then discharged.

The claimant received various written warnings, or verbal warnings with a written record, as shown at Employer's Exhibit Two. The claimant received a Performance Feedback Notice, characterized as a written warning, on March 21, 2005, for allegedly failing to fill out paperwork concerning a work-related injury. The claimant was given an incident report to complete for an injury he suffered on or about March 7, 2005. The incident report is shown at Claimant's Exhibit C. Initially, the claimant filled out, at least portions, of Section One. The employer returned it to the claimant to complete the rest of the portion, and he did so and submitted it to the employer. Nevertheless, the employer believed that the claimant had not promptly filled out the paperwork upon the first request and gave the claimant a written warning. The claimant refused to fill out Section Two because he disagreed with Section Two, but the administrative law judge notes that Section Two is to be completed by the supervisor or manager, and does not require the claimant's signature.

The claimant also received a Performance Feedback Notice, characterized as a Job in Jeopardy Notice, for allegedly not placing enough pins in a part according to instructions in the Red Book, a quality manual. Insufficient pins were placed in the part, but it was not the claimant's fault, as he was not running the press at the time. The claimant had not seen or signed the Red Book, because he was not running the press. However, the claimant got the warning as noted. On August 31, 2004, the claimant received a Performance Feedback Notice, again, characterized as a Job in Jeopardy Notice, for manufacturing parts that did not meet standards. However, the machine had been running for a long time, as shown at Claimant's Exhibit B, without being shut down. These substandard parts were not the claimant's fault. On March 28, 2004, the claimant received a Performance Feedback Notice, characterized as a verbal warning, when the decals were coming off of parts. This was not the claimant's fault, but rather that of the stamper's. The claimant informed Quality Assurance of this, as he was supposed to do. Finally, the claimant received a Performance Feedback Notice, characterized as a verbal warning, on December 22, 2003, for scratching parts. However, the gates were scratching the parts and the claimant had informed Quality Assurance of this as well. On February 23, 2004, the claimant was given a six-month review which was very positive, and for which the claimant received a maximum 50 cent per hour raise, as shown at Claimant's Exhibit A. Pursuant to his claim for unemployment insurance benefits filed effective April 10,

2005, the claimant has received no unemployment insurance benefits, being shown as disqualified as a result of a discharge for misconduct, but records show that the claimant is overpaid unemployment insurance benefits in the amount of $477.00 from 2003.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was not.

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 parties agree, and the administrative law judge concludes, that the claimant was discharged on April 10, 2005. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. It is well established that the employer has the burden to prove disqualifying misconduct. See Iowa Code section 96.6(2) and Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (Iowa 1982) and its progeny. Although it is a close question, the administrative law judge concludes that the employer has failed to meet its burden of proof to

demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The employer's witness, Kay Cramer, Human Resources Manager, credibly testified that the claimant was discharged for sitting on a table after being instructed not to do so. However, although Ms. Cramer's testimony is credible, she testified from hearsay, and in particular the statements shown at Employer's Exhibit One. The claimant credibly denied ever sitting on a table. The administrative law judge must conclude on the evidence here that the claimant's direct and specific and credible denial outweighs the hearsay evidence offered by Ms. Cramer. The administrative law judge notes that one of the statements at Employer's Exhibit One does not even seek to state that the claimant sat on a table after being instructed not to do so, but merely states that the claimant was instructed not to do so, and even the claimant concedes that he was instructed not to do so. Another statement merely says that the claimant was "caught … getting up from sitting down on the table." The statement does not specifically say that the claimant was sitting on the table. The administrative law judge must conclude that the claimant was not sitting on the table and that his discharge was not for disqualifying misconduct.

The claimant received a number of written reprimands, called Performance Feedback Notices, as shown at Employer's Exhibit Two and as set out in the findings of fact. However, the claimant has explanations that ameliorate the reprimands. For example, the claimant was given a Performance Feedback Notice, characterized as a written warning, for failure to provide paperwork to the employer concerning a job-related injury, but the evidence establishes that the claimant provided such paperwork. The claimant filled out portions of Section One of an incident report, as shown at Claimant's Exhibit C, and then it was returned incomplete and the claimant finished completing it and signed the same. It is true that the claimant refused to sign Section Two, but there does not appear to be any reason for the claimant to sign Section Two, since it is a portion to be completed by the supervisor or manager. Similarly, the claimant offered explanations for the other reprimands.

On the record here, the administrative law judge is constrained to conclude that there is not a preponderance of the evidence of any deliberate acts or omissions on the part of the claimant constituting a material breach of his duties and/or evincing a willful or wanton disregard of the employer's interests and/or in carelessness or negligence in such a degree of recurrence as to establish disqualifying misconduct. At most, the evidence establishes some isolated instances of negligence, but they are too different in nature, and too spread out over time, to establish recurring carelessness or negligence. Therefore, the administrative law judge concludes that the claimant was discharged, but not for disqualifying misconduct and, as a consequence, he is not disqualified to receive unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment insurance benefits, and misconduct to support a disqualification from unemployment insurance benefits must be substantial in nature. Fairfield Toyota, Inc. v. Bruegge, 449 N.W.2d 395, 398 (Iowa App. 1989). The administrative law judge concludes that there is insufficient evidence here of substantial misconduct on the part of the claimant to warrant his disqualification to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant, provided he is otherwise eligible.

DECISION:

The representative's decision of April 29, 2005, reference 01, is reversed. The claimant, Richard Green, is entitled to receive unemployment insurance benefits, provided he is otherwise eligible, because he was discharged, but not for disqualifying misconduct. Records indicate that the claimant is overpaid unemployment insurance benefits in the amount of $477.00 from 2003.

kjw/pjs