IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JANI E MEADOWS
Claimant

NEIGHBORHOOD PATROL INC
Employer

APPEAL NO. 12A-UI-03759-H2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03-11-12
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 5, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 26, 2012. The claimant did participate along with her witness, Dave Parker and was represented by Laura Humes, Attorney at Law. The employer did participate through (representative) Dick Rogerson, Director of Human Resources, Keith Ottoson, Security Officer, Rick German, Operations Manager, Tammy Clingan, Security Officer and Teresa Innis, Security Officer. Claimant's Exhibit A was entered and received into the record. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a security officer full time beginning July 20, 2010 through March 12, 2012 when she was discharged. The claimant was discharged after one of her coworkers complained that she was rude and difficult to work with. After Ms. Clingan complained about the claimant's treatment of her, the employer investigated by speaking to other employees including Ms. Innis and Mr. Ottoson. Neither Mr. Ottoson nor Ms. Innis had complained about the claimant's treatment of them prior to the employer's specific inquiry. Both reported that the claimant could be short, rude and used offensive racial slurs as well as profanity. When the employer spoke to the claimant she denied ever using any racial slurs, ever treating any of her coworkers in a rude manner or ever using profanity when speaking to her coworkers. There were no witnesses to the claimant's alleged mistreatment of her coworkers. The claimant was discharged when the employer chose to believe the allegations of the claimant's coworkers. The claimant had no prior warnings for any prior rules violations or behavior.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant 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.

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). 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. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

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, employer incurs potential liability for unemployment insurance benefits related to that separation. The employer's evidence simply does not establish that the claimant engaged in any of the conduct for which she was discharged. There are no witnesses to her alleged use of profanity or racial slurs. Additionally, two of the employees did not complain about the claimant until asked by the

employer to register their complaints. Inasmuch as employer had not previously warned claimant about any of the issues leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the 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. Benefits are allowed.

DECISION:

The April 5, 2012 (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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Teresa K. Hillary
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs