

Employer discharged claimant on September 11, 2005 because claimant tried to turn in merit badges that he did not earn. A coworker purchased some merit badges off the internet. Pursuant to employer's policy five badges were worth \$100.00. Claimant relied on the coworker's statement that combining badges earned by other employees was acceptable. Claimant turned in five badges he did not earn and was promptly discharge by the employer for dishonesty.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this matter is whether claimant was discharged for misconduct.

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).

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be

based on such past act or acts. The termination of employment must be based on a current act.

The administrative law judge holds that the evidence has failed to establish that claimant was discharged for an act of misconduct when claimant violated the employer's policy concerning dishonesty. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, fails to constitute misconduct because claimant thought he was complying with policy. Claimant had no prior warnings on his record to show that he was in danger of discharge on the next policy violation. Claimant had no heightened sensitivity which would direct him to ask about the policy before turning in the badges. This is an isolated instance of poor judgment on a clean record of employment. This is not an intentional violation of a known company rule. Therefore, claimant was not discharged for an act of misconduct and as such, is not disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated September 29, 2005, reference 01, is affirmed. Unemployment insurance benefits shall be allowed, provided claimant is otherwise eligible.

mdm\s