IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

SETH W BARTMESS
Claimant

NPI SECURITY
NEIGHBORHOOD PATROL INC
Employer

APPEAL NO. 14A-UI-00275-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/27/13
Claimant: Respondent (1)

Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

NPI Security (employer) appealed a representative's January 7, 2014, decision (reference 02) that concluded Seth Bartmess (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 30, 2014. The claimant participated personally. The employer participated by Tom Scallon, Manager, and Stewart Holloway, Operations Manager. The employer offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 24, 2013, as a full-time security officer. The claimant signed for receipt of the employer's handbook. The employer had an open door policy for questions. The claimant was absent three days during his employment. The employer issued the claimant a written warning in November 2013, for failure to wear a tie.

On December 9, 2013, the claimant received his schedule and discovered he had been scheduled for sixteen hours for the week. This was the third week this had happened. The claimant called the supervisor and said he was looking for more hours. The employer told him that there were no accounts available. The claimant asked the supervisor if he could live off sixteen hours a week. The supervisor said it was not about him. The claimant asked again. The supervisor said he did not like the claimant's tone and terminated the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not 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.

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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Asking the employer a question is not misconduct. The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's January 7, 2014, decision (reference 02) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs