IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ROBERT R PAIGE
Claimant

TPI
Employer

APPEAL NO. 07A-UI-02506-HT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/11/07 R: 04
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Robert Paige, filed an appeal from a decision dated March 6, 2007, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on March 28, 2007. The claimant participated on his own behalf and was represented by Iowa Legal Aid in the person of Todd Schmidt The employer, TPI, participated by Human Resources Manager J.T. Breslin. Exhibit A was admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Robert Paige was employed by TPI from January 3, 2003 until February 12, 2007, as a full-time machine operator working third shift. He received copies of the employee handbook and the collective bargaining agreement which set out the progressive disciplinary procedure. Employees are generally given a "coaching" if there are performance issues but if improvement is not seen, then formal written warnings will be initiated. Four written warnings will result in discharge.

Mr. Paige was given verbal coachings in 2006 for carelessness in performing his job duties. After each one, some improvement would be seen for a while, but then the problems would start again. Formal disciplinary action was started on December 22, 2006, with other warnings for carelessness on January 31 and February 7, 2007, which also included a three-day suspension which he served on February 8, 9 and 12, 2007.

On February 6, 2007, two employees, Caroline and Darlene, reported to Human Manager J.T. Breslin that Mr. Paige had made inappropriate remarks to Darlene on the shift they had just completed. He interviewed both of them to get full details, and interviewed a third witness, Teresa, on February 8, 2007. All of their statements agreed that while Darlene had been bending over the part she was working on, which is required as part of the manufacturing

process, he said, “Darlene, don’t bend over like that,” and “you can come and sit on my part any time.”

Mr. Breslin reviewed the claimant’s disciplinary history with his immediate supervisor, Kevin Haynes and a union representative to determine where he was in the disciplinary process. The employer’s policy on a “respectful workplace” focuses more on how comments are perceived by others to whom they are addressed, and Darlene, Caroline and Teresa were all offended and upset about the remarks.

When the claimant returned from his three-day suspension he was asked about the incidents and he only said he could “not remember” what he said, but he had not meant to be offensive. He was issued his fourth disciplinary warning and discharged.

REASONING AND CONCLUSIONS OF LAW:

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 claimant had been advised his job was in jeopardy as a result of receiving three disciplinary actions since December. While it may be true he did not mean to be offensive when he made

the remarks to Darlene, they were nonetheless inappropriate and caused her some distress, which is the focus of the employer's respectful workplace policy. The employer has the obligation to provide a safe and harassment-free work environment for all employees and the claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

The claimant stated in the hearing he had not made the remarks but also stated he did not remember what he did say. He could not offer any explanation why three separate individuals would fabricate the same story about him.

He also included information about a work-related injury in January 2006, which the administrative law judge cannot conclude has anything to do with why he had been fired. His doctor released him to return to work without restrictions in February 2006 and no connection between the injury and the reasons for the discharge can been detected. Any allegations of a conspiracy to fire him because of the injury is not logical as he was not receiving any workers compensation benefits at the time of separation, and the employer was not having to accommodate any work restrictions. He was working without restrictions at his regular duties for nearly a year before the discharge.

The claimant also appears to be focusing on the fact he did not intentionally fail to produce parts which were within the required specifications. However, he had a history of counselings because of poor work performance for some time. He would improve somewhat after the counselings, which indicates he was capable of performing the job to the employer's satisfaction, but then his performance would become substandard again. Misconduct does not always require willful and deliberate intentions to work against the employer's best interest, but under the provisions of the above Administrative Code section, can include negligence to such a degree of repetition as to constitute equal culpability.

The record establishes the claimant was discharged for misconduct and he is disqualified.

DECISION:

The representative's decision of March 6, 2007, reference 01, is affirmed. Robert Paige is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

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Bonny G. Hendricksmeyer
Administrative Law Judge

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Decision Dated and Mailed

bgh/css