IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JOHN D CLARK
Claimant

WEST LIBERTY FOODS
Employer

APPEAL NO. 12A-UI-07585-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/27/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

West Liberty Foods (employer) appealed a representative's June 13, 2012 decision (reference 01) that concluded John Clark (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 July 18, 2012. The claimant participated personally. The employer participated by Monica Dyar, human resource supervisor. The employer offered and Exhibit One 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 having considered all of the evidence in the record, finds that: The claimant was hired on October 6, 2008, as a full-time crib clerk. The claimant signed for receipt of the employer's handbook on October 6, 2008. In early May 2012, the employer talked to the claimant about horseplay. The claimant complained that co-workers were making sexual comments about his wife, yelling at the claimant, and playing pranks on him. The employer told the workers to quit the horseplay or employees would be terminated.

On May 23, 2012, the claimant was trying to clock in. A co-worker pulled the claimant's earplugs from his ears and threw them. The claimant asked where they were and the co-worker told him they were on the floor. They were not on the floor. The claimant got a new pair of earplugs. Another employee pulled papers out of the claimant's back pocket. The claimant turned around to retrieve them. When the claimant turned back around the first co-worker was closer to him. The claimant threw a lightweight box he had in his hands as a protective reflex. The box struck the co-worker's face but did not cause any damage. The co-worker yelled at the claimant and pushed the claimant around with his stomach. The claimant froze and someone threw a box at the claimant's head.

On May 25, 2012, the employer terminated the claimant. The employer issued the co-worker a three-day suspension and the other employee a counseling notice.

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). If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). The employer had the power to present testimony but chose not to do so. The employer did not provide first-hand testimony at the hearing and, therefore, did not provide sufficient eyewitness evidence of job-related misconduct to rebut the claimant's denial of said conduct. The claimant's reaction to the co-worker's aggression was a protective reflex. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's June 13, 2012 decision (reference 01) is affirmed. The employer has not met its burden of 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/kjw