IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

KEVIN C KELLER
Claimant

HOLT PLUMBING & HEATING INC
Employer

APPEAL NO. 10A-UI-12662-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/07/10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Holt Plumbing & Heating (employer) appealed a representative's September 2, 2010 decision (reference 01) that concluded Kevin Keller (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 October 29, 2010. The claimant was represented by Ryan Beattie, Attorney at Law, and participated personally. The employer participated by Lynn Holt, Owner; Mylar Waters, Assistant General Manager; and Jessica Jackson, Dispatcher.

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 April 27, 2010, as a full-time service plumber. The employer does not have an employee handbook. On July 13, 2010, the claimant was suffering from the effects of the outside temperature. He was sweating profusely and had changed his shirt twice. Throughout the day the claimant let the vehicle idle a total of four hours and 13 minutes in order to stay cool. The employer issued him a warning on July 14, 2010, for excessively idling the vehicle. After that the employer wrote "Guidelines for Driving". In the guidelines the employer prohibited idling the vehicle for more than five minutes if the outside temperature was under 85 degrees. Employees were permitted to idle more than five minutes if the outside temperature was greater than 85 degrees. Thermometers were not present in the vehicles. The claimant signed for receipt of the guidelines on July 19, 2010. Idling was recorded by the vehicle's Global Positioning Device (GPS). The GPS did not indicate if the idling occurred waiting at a traffic light, for a train, for an accident, or while filling out paperwork.

On August 6, 2010, the employer issued the claimant a written warning for excessive idling on August 4, 2010. The outside temperature was 86 at 5:56 p.m. at an unknown location in Iowa. The claimant idled for 12 minutes at 2:29 p.m., 9 minutes at 3:15 p.m., 9 minutes at 4:33 p.m. and 11 minutes at 6:46 p.m. The temperature at the time and location of each instance of idling

was unknown. The claimant asked the dispatcher for guidance and the dispatcher recited the guidebook.

On August 11, 2010, the outside temperature reached 94 degrees by 3:30 p.m. The claimant idled the vehicle at 3:47 a.m. for 6 minutes, 7:24 a.m. for 6 minutes, 10:08 a.m. for 6 minutes, 10:35 a.m. for 7 minutes, 12:12 p.m. for 7 minutes, 12:46 p.m. for 8 minutes and 1:17 p.m. for 11 minutes. The temperature at the time and location of each instance of idling was unknown. The employer terminated the claimant on August 12, 2010, for idling the vehicle for more than five minutes when the temperature was below 85 degrees.

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). The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa App. 1985). The employer requested the claimant not to idle the vehicle for more than

5 minutes when the temperature was less than 85 degrees. The employer's request was not reasonable because it did not give the claimant the means to measure the temperature. In addition it did not indicate what location had to reach 85 degrees. The dispatcher knew the claimant was asking for guidance but it could only recite the rule without identifying the temperature at the moment. Without the ability to know the temperature or get information from the dispatcher, the claimant could not follow the rule. The employer did not provide sufficient evidence of willful job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's September 2, 2010 decision (reference 01) 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