IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MARK TEMPLE
Claimant

NESTLE PURINA PETCARE COMPANY
Employer

APPEAL NO: 14A-UI-12199-ET

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/02/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 21, 2014, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 23, 2015. The claimant participated in the hearing with Attorney Heather Carlson. Rick Wolf, Human Resources Manager and Frankie Patterson, Employer Representative, participated in the hearing on behalf of the employer. Claimant's Exhibits A and B were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time dry pet packing operator for Nestle Purina Petcare Company from March 10, 2008 to November 1, 2014. He worked from 11:00 p.m. to 7:00 a.m. He was discharged from employment for sleeping on the job and a safety violation, both of which occurred October 29, 2014.

The claimant was given a new medication the week before and took it for the first time October 28, 2014. He was feeling nauseous and slightly dizzy. He was assigned to relieve the operator of line 10 while he went on break around 3:30 a.m. Supervisor Doug Covault was walking to the packing room and noticed line 10 was not running. Mr. Covault went to check on the reason the line was not running and observed the claimant leaning against the bundler area next to a bucket on line six. He was sitting on a table the operators on line 10 sit on while waiting for the run to finish. That table abuts line six. The door of line six, which was adjacent to the line 10 machine, was open. Line six was not running and had not been running that shift. Employees on line ten often open the door to line six for warmth. Mr. Covault woke the claimant and asked him if he was working on the bundler and the claimant replied he was not but was relieving the line ten operator. Mr. Covault asked the claimant if he was feeling okay and the claimant stated he was fine but tired. The claimant had notified Mr. Covault about his medication change October 24, 2014, when first placed on the medication after he asked

Mr. Covault for four hours off to go to the doctor. He did not experience problems with his new medications until October 28, 2014, the day he began taking it.

Mr. Covault called the claimant into the office and asked him how things were going and if everything was alright. The claimant stated he was not feeling well because of his new medications. He further explained the bucket was next to him because he was nauseous and the door to line six was open for heat. At the conclusion of the meeting Mr. Covault said he would see the claimant that evening for his shift.

On October 30, 2014, the employer called the claimant and told him not to report for work until further notice because of the incident October 29, 2014, but would not give the claimant any specific information. The claimant tried to call Mr. Covault unsuccessfully the next two days and on November 1, 2014, the employer notified the claimant his employment was terminated for sleeping on the job and because of a safety violation as he did not lock-out/tag-out line six when the door to that machine was open and the claimant was leaning against the bundling area. The claimant maintains he did not have to lock-out/tag-out line six as it was common practice not to perform that task because it was a manual interlock and when the door is open the machine will not run.

The claimant had not received any verbal or written warnings during his tenure with this employer and received satisfactory reviews for the two years the employer conducted employment evaluations of the claimant performance.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.,* 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant did fall asleep briefly while waiting during the ten minute interval between loading bags into line six. He was taking a new medication that made him drowsy and nauseous, which is why he also had a bucket next to him. He was sitting on the table abutting line six which employees routinely sit on while waiting to load the bags into line ten. The door to line six was open because it was common practice for employees to open that door for warmth when line six was not running and the claimant had the door open and was leaning back against the alcove. While he did not lock-out/tag-out line six because the machine was not being operated that evening and additionally the machine will not run with that door open. The claimant was not aware the employer would consider that a lock-out/tag-out safety violation or that his actions with regard to line six could result in his termination.

While the claimant did fall asleep for a few minutes, his actions were not an intentional or willful violation of the employer's policy but can be attributable to the side effects of his new medication. With regard to failing to lock-out/tag-out line six, it was routine practice for employees to open the door to line six for warmth and because line six would not run with the door open they did not lock-out/tag-out that machine. The claimant was not aware that the employer would consider his actions a safety violation, which was a terminable offense, and again his behavior cannot be considered an intentional or willful violation.

Under these circumstances, the administrative law judge must conclude the employer has not met its burden of proving disqualifying job misconduct as the claimant's actions do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The November 21, 2014, reference 02, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder
Administrative Law Judge

_____
Decision Dated and Mailed

je/pjs