

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LARRY W LIPPMANN
Claimant

APPEAL NO. 09A-UI-00304-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACTERRA GROUP INC
Employer

**OC: 11-30-08 R: 03
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 30, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on January 22, 2009. The claimant did participate. The employer did participate through Craig Beadle, Purchasing Manager.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a shipping and receiving clerk full time beginning January 17, 2005 through December 3, 2008 when he was discharged.

The claimant was discharged because his supervisor did not believe he would follow instructions properly. At various times during his employment the claimant had been told that he was to perform his tasks as instructed by Mr. Beadle. The claimant took it upon himself to perform the tasks how he thought they could best be accomplished, instead of as Mr. Beadle directed him. The claimant was given feedback in his annual performance evaluations that he was not meeting Mr. Beadle's expectation because he continued to disregard Mr. Beadle's instructions as to how certain tasks should be accomplish. For instance, Mr. Beadle repeatedly told the claimant that he was to handle one package at a time when doing the receiving work. Instead the claimant would perform every step of the process for each package at one time. This resulted in no packages being completed until near the end of the day. Despite the claimant's repeated failure to follow directions he was never given any verbal or written warnings that his conduct was placing his job in jeopardy.

The employer's handbook provides that to discharge an individual for poor work performance the employer would first warn them verbally, then in writing and then the employee would be terminated. The claimant was never given either a verbal or written warning that he was to change his conduct or face discipline that could include discharge.

On one occasion the claimant swept the floor, but instead of disposing of the sweepings in the trash, he intentionally hid them behind a barrel. When confronted by Mr. Beadle the claimant admitted hiding the sweepings and said he would not do it again. A few weeks later Mr. Beadle again found a pile of sweeping lying in the middle of the floor instead of in the waste basket. When he confronted the claimant about the sweepings, the claimant said that he had followed Mr. Beadle's instructions since he had not hidden the sweepings behind a barrel. The claimant had not disposed of the sweeping as he had been told to do.

No particular event caused Mr. Beadle to make the decision to discharge the claimant other than he became weary of telling the claimant repeatedly to perform his tasks in the manner in which he had been instructed.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes 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.

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 issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to

unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” When based on carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation.

The claimant’s job performance was not meeting the employer’s expectations because he was not performing his tasks as he had been instructed on numerous occasions by Mr. Beadle. Mr. Beadle never warned the claimant either verbally or in writing that his failure to change his conduct could lead to his discharge. The claimant was entitled to fair warning that the employer was no longer going to tolerate his performance and conduct. Without fair warning, the claimant had no way of knowing that there were changes he needed to make in order to preserve his employment.

The employer has not met their burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given.

While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. *Budding v. Iowa Department of Job Service*, 337 N.W.2d 219 (Iowa App. 1983). Inasmuch as the employer has not established a current or final act of misconduct, benefits are allowed.

DECISION:

The December 30, 2008, reference 01, decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css