IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

JERRY A WARD Claimant **COPART OF CONNECTICUT INC** Employer	**APPEAL 16A-UI-05041-JP-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 04/03/16** **Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 22, 2016 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 13, 2016. Claimant participated. Employer participated through hearing representative David Moehle, customer support operations manager Matt Mercer, and human resources specialist Christina Blotzer. Employer's Exhibit One was admitted into evidence with no objection.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a network office manager from June 18, 2012 and was separated from employment on April 7, 2016, when he was discharged.

Claimant was discharged on April 7, 2016, for breaking a confidentiality agreement that he had signed. Claimant signed a confidentiality agreement on April 5, 2016. Employer's Exhibit One. Claimant was brought into the office on April 5, 2016 because there had been a formal complaint(s) made to human resources from an employee(s) that claimant was supervising about his conduct towards the employee(s). At the meeting the employer had claimant sign the confidentiality agreement. Employer's Exhibit One. The employer verbally stated the authorized parties when the agreement was signed. The authorized parties were not listed on the agreement. Employer's Exhibit One. The authorized parties were: Mr. Mercer, Alice Karanja, and David Scaff; these parties were also present, either in person or on the phone, during the meeting. The employer told claimant what the investigation was about and asked him some questions to get his version of the events. The employer then suspended claimant indefinitely until the investigation was completed. If claimant returned from the suspension he would be paid for the suspension, but if he did not return, he would not be paid.

On April 7, 2016, claimant was still on suspension when he called Ms. Blotzer. Ms. Blotzer was not authorized to know about the investigation. Claimant told Ms. Blotzer that he had been on suspension since April 5, 2016. Claimant stated he thought it had to do with comments made to a customer service representative. Claimant also told Ms. Blotzer that he was currently under investigation by someone named Alice Karanja and David Scaff. Claimant also asked if it was normal for an employee to be locked out of their e-mail if they are under investigation. Ms. Blotzer told claimant she could not comment on that and he needed to talk Mr. Mercer (claimant's direct manager) or Ms. Karanja (claimant's regional human resources manager). Ms. Blotzer referred claimant to them (Mr. Mercer and Ms. Karanja) because if there was an investigation, those two would know what was going on. Claimant then had specific questions about his benefits and if he was discharged in April, how long would they carry over. Ms. Blotzer answered claimant's question about the benefits. Claimant then asked how soon he would find out if he was discharged. Ms. Blotzer said she could not answer that and referred him to Ms. Karanja and Mr. Mercer. After the phone call concluded, Ms. Blotzer was unable to get a hold of Ms. Karanja, so she contacted Mr. Scaff to report that claimant had violated the confidentiality agreement.

During the April 7, 2016 phone call, claimant was not trying to find out who made the complaint. Claimant was also not trying to influence the investigation during the phone call. Claimant made the phone call to find out about his benefits and how long the investigation would last so he will know if he still has a job.

Claimant had no prior disciplinary warnings. The confidentiality agreement did not state claimant would be automatically discharged for violating the agreement. Employer's Exhibit One.

REASONING AND CONCLUSIONS OF LAW:

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

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 proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. 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. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. 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." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.,* 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In an at-will employment environment 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, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

On April 5, 2016, claimant signed a confidentiality agreement that prohibited him from discussing the investigation with anyone that was not an authorized party. Employer's Exhibit One. The confidentiality agreement did state that a violation "may result in disciplinary action" but did not state that a violation would result in an automatic discharge. Employer's Exhibit One. Furthermore, it is instructive that the employer presented the document to claimant but did not detail on the document, in writing, any authorized parties. Employer's Exhibit One.

On April 7, 2016, claimant contacted human resources specialist Ms. Blotzer about his benefits and the length an investigation would last. During the April 5, 2016 meeting, the employer did not give claimant any timeframe on the investigation. Although claimant did mention the investigation to Ms. Blotzer and she may not have been an authorized party, it is instructive that

even Ms. Blotzer did not believe claimant's phone call was with the purpose to influence the investigation or uncover information about the investigation. Claimant made a call to a human resources employee about his benefits and also made a reasonable inquiry into how long until he found out if he was going to be discharged. There was no evidence claimant willfully tried to violate the confidentiality agreement. Claimant's disclosure of the investigation to Ms. Blotzer was likely to facility the reasons behind his questions about his benefits.

The conduct for which claimant was discharged was merely an isolated incident of poor judgment and inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Benefits are allowed.

DECISION:

The April 22, 2016 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

_____
Jeremy Peterson
Administrative Law Judge

_____
Decision Dated and Mailed

jp/can