IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

CODY M DOBSON
Claimant

BURKE MARKETING CORPORATION
Employer

APPEAL NO. 09A-UI-11330-LT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/05/09
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 5, 2009, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was begun on August 24, 2009 and concluded on September 9, 2009. Claimant participated and was represented by Doug Beals, Attorney at Law. Employer participated through Robert Gray, Shelly Siebert and Terry Ubben. Ubben did not participate on September 9, 2009. Employer's Exhibits 1 through 10 were admitted to the record.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a substitute or backup mixer operator and was separated on July 9, 2009. Claimant had been filling in for someone on maternity leave since April 1, 2009. She was expected back to work on July 5, 2009 and at some point Gray told claimant they would talk about where they would put him when she got back from maternity leave because he had already filled his original position. Before the maternity leave started he only received training off and on depending on whether others needed his help to fill in when they were on vacation or ill. On June 25 he was accused of having falsified documents about a batch by recording that he had completed full mixing cycles when only partial cycles were done. According to production documents claimant ran Mixer 1 in the West Cell and one cycle mixed for 50 seconds rather than required 180 seconds in duration; another mixed 194 of 240 seconds; and two more mixed 154 and 129 of 180 seconds each. (Employer's Exhibit 1). The potential consequence is that the yield may be insufficient, the ingredients may not mix into the meat and protein properly, it may cause extruding problems, and the texture may be varied rather than consistent. The product should have also been chilled to 38 or 39 degrees rather than the recorded 45 degrees. (Employer's Exhibit 1). Supervisor Gray pulled him aside and met with him on June 26 and wrote an e-mail to others about that meeting since he was going on vacation and Ubben was going to continue the investigation. He initially denied all allegations and then admitted he did not mix the last batch

as required. (Employer's Exhibit 2). Gray told him he would continue working while he was on vacation and they would talk when he got back but that his job was on the line and the matter would take further investigation. Claimant did not notice problems with the machine because he was running around getting ingredients for the next batch. Processing a batch from start to completion takes about seven minutes. While one batch is being processed, the operator generally refers to the batch sheet that shows instruction for next assignment and gathers ingredients for the next batch. The meat runner is notified to bring protein bags (3 to 14 - 25 pound bags per batch), the operator opens the bags and dumps them into the buggy, puts all ingredients (water, caramel color or spices, peppers, and/or cheese) into the buggy, and empties the contents from the buggy into the mixer. The meat dumper and auger measure meat into the mixer, the operator closes the cover on mixer, sets the time and temperature with computer function buttons and the machine runs through the cycle automatically, except where salt is to be mixed into the meat and protein first and the remaining ingredients are added later in the cycle. One time he had to shut down the machine in mid-cycle using the E-stop button for a tornado warning otherwise he did not stop the machine during batches. He knew the company could print reports and monitor his work activity so did not knowingly record inaccurate information and believed he had completed every job correctly and self reported those he did not.

Claimant had a corrective action issued on July 9 for the failure to follow the mixing procedures and was discharged the same day for having an excessive number of warnings within a year. (Employer's Exhibit 3). On January 16, 2009 while working as a backup cooler recorder he called employer after the shift had ended and notified him he had forgotten to add one more ingredient container to the job. He was warned for having failed to complete all jobs before leaving for the day. (Employer's Exhibit 4). On February 6, 2009 as a backup cooler attendant employer warned him for recycling another product improperly in a government product job according to the USDA inspector. The product runs extremely fast and another person put their combos (large food containers) in his area while he was in another area retrieving ingredients and did not tell him so when he returned he took their combo to the cooler by mistake. He knew the separation necessary but did not know about the switch until the USDA inspector pointed it out. (Employer's Exhibit 5). On February 9, 2009 as a backup cooler recorder he was accused of working with edible product without wearing a frock. He was running a pallet jack taking sealed lid combos to the cooler. He thought a frock was only required when meat was exposed in the combo. (Employer's Exhibit 6). On February 12 while working as a general laborer he was warned for not washing his hands before going into the production and processing area after coming from another area. He had not gone into the processing part of the plant when he noticed a line of six people waiting to use the sink and the shelf by the sink was covered by their gloves so he went to the computer to set down his gloves before turning back to wash his hands and enter the production area. His supervisor noticed him at the point where he was walking towards the computer. (Employer's Exhibit 7). On April 9, 2009 he was warned after self-reporting that he had forgotten to add spice to a batch, which required additional time to reprocess and adversely affected the texture of the product. (Employer's Exhibit 8). On April 28, 2009 he was warned after he reported he forgot to add caramel color to the batch and had to reprocess it, which changed the texture. (Employer's Exhibit 9). In his June 1, 2009 performance review employer noted he needed improvement in learning from mistakes, but was complete and thorough in his work activity and speed, strove for accuracy and overall met expectations. (Employer's Exhibit 10).

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.
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> 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).

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, employer incurs potential liability for unemployment insurance benefits related to that separation. Given that claimant did not receive the full period of training before he began substituting, the warnings covered at least four different job descriptions, he self-reported errors when he was aware of them, the machine operated automatically without manual stops during mixing cycles, and he

could not maintain the speed expected if he did not retrieve ingredients for the next batch while one was mixing, the oversight of the reduced mixing times on June 25 did not rise to the level of disqualification. Benefits are allowed.

DECISION:

The August 5, 2009, reference 01, decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/css