IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

RANDY BUSH
Claimant

J & K CONTRACTING LLC
Employer

APPEAL NO. 10A-UI-07440-ET

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 04-11-10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 20, 2010, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 8, 2010. The claimant participated in the hearing. Jeremy Feldmann, President, participated in the hearing on behalf of the employer.

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 machine operator for J & K Construction from July 2009 to May 2010. He was laid off at the end of September 2009. The claimant was notified by mail and by his foreman that he was to attend a mandatory employee review session December 28, 2009. He was going to ride with his foreman but forgot about the appointment and testified his foreman told him the review was "not that mandatory." The claimant did not call his foreman or the employer to reschedule the review once he realized he forgot his appointment. Additionally, his foreman was to notify him of a mandatory OSHA safety meeting to be held in March 2010. The claimant denied receiving a letter from the employer or a call from his foreman about that meeting and did not attend. He was the only employee not to attend his review session and the safety meeting and the employer believes someone told him the claimant planned to quit his job. He has not been recalled to his employment with this employer.

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 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 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). While the claimant failed to attend the mandatory review session December 28, 2009, he testified he was not informed of the mandatory safety meeting in March 2010. Although the claimant's testimony was not particularly credible, the employer could not provide any evidence of what conversations occurred between the claimant and his foreman regarding the review or prove the claimant was informed of the safety meeting, as it apparently did not send registered letters to employees so it could show employees were definitely notified of the review and safety meeting. Furthermore, the employer did not mention the claimant's failure to attend either meeting during the fact-finding interview and the claimant testified he never told anyone he was not coming back to work for the employer. While not completely convinced the claimant did not know of both meetings and that each was mandatory, the administrative law judge must conclude the employer has not met its burden of proving disqualifying job misconduct as defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The May 20, 2010, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. He is no longer on a temporary layoff but is separated from this employer and must begin making at least two work searches per week. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder
Administrative Law Judge

_____
Decision Dated and Mailed

je/kjw