IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

LAMARCUS E WILLIAMS
Claimant

GREYSTONE MANUFACTURING LLC
Employer

APPEAL NO. 08A-UI-01139-LT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/06/08 R: 04
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 30, 2008, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on February 18, 2008. Claimant participated. Employer participated through James Strieck, Tony Martinez, Ron Schelhaas, Shane Smith, Josh Workman, and John Jones.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time machine operator from May 15, 2007 until November 8, 2007 when he was discharged. On November 8 Martinez asked claimant to help relieve other operators while they went to lunch. Claimant did not hear Martinez asking him to relieve others for breaks or being written up for the issue. Schelhass and Smith were not present. Jones had no direct communication with claimant and was not initially clear about where he was on the line providing break relief and whether he could hear claimant and Martinez. He initially said he had no idea about what happened but then said he was able to see claimant on the next machine. He did say he did not know claimant's response to Martinez's request to relieve others for breaks and noted the incident was four months prior so he could not remember what happened. The documents employer provided in response to claimant's subpoena do not indicate receipt of the handbook or receipt of or refusal to sign for prior written warnings about alleged insubordination. The only issue claimant recalls was a loud request with offensive language from Smith to move his truck. Claimant reported his complaint to Schelhaas and Strieck who accused him of being insubordinate for not moving his truck.

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. Jones has questionable credibility at best since his answers varied and on at least one occasion he stated he "would not have a clue," had "no idea" or could not remember what happened four months earlier. Furthermore, employer has not otherwise rebutted claimant's denial of the allegation and since there is no documented evidence claimant had received or refused to sign for receipt of any warning his job was in jeopardy for any reason prior to the separation. 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 to 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. Benefits are allowed.

DECISION:

The January 30, 2008, reference 01, decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible. The benefits withheld effective the week ending January 12, 2008 shall be paid to claimant forthwith.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs