IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ROBERT F HANSON
Claimant

TITAN TIRE CORPORATION
Employer

APPEAL NO. 13A-UI-06595-L

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/12/13
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 31, 2013, (reference 01) decision that denied benefits. After due notice was issued, a hearing was held on July 9, 2013 in Des Moines, Iowa. Claimant participated with United Steel Workers' Union Local 164 President and Titan Tire Electrician Jason Stegman. Employer participated through Human Resources Manager Joyce Kain and Millroom Department Manager Shane Ort. Employer's Exhibits 1 and 2 were received.

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 as a full-time tuber operator and former union steward from January 19, 1998, through May 13, 2013, when he was discharged. On May 7 claimant was standing outside the door to the break room talking with coworker Faheed about not being sure if he clocked in or not. He waited for the clock to reset in case he had, and clocked in. Claimant extended his arm towards the door to keep it from closing. As he turned towards the door it slammed shut against his hand. The force of the door slamming against claimant's knuckles caused the glass to break and small pieces of glass to fall onto the floor. The door, with wire enforced safety glass in the upper half, opens in towards the break room and was propped open because the air conditioning was not working. The door, with an automatic closer, had a history of sticking at a certain point of the closing arc and then slamming shut the rest of the way. Claimant self-reported the injury to Ort, who was in the administrative office complex across the hall, about ten feet away, with the door open. Ort did not hear anything and claimant was not angry or upset just prior to the injury. Stegman noticed the break room and administrative office complex doors were both propped open because the air conditioning was broken. Ort nodded as if in agreement when Stegman testified about the open doors. Shortly after the incident Stegman saw plant mechanics, not Two Rivers Glass & Door employees, removing the glass and working on the door. The next time he saw the glass was in a cardboard box in the union hearing. The hole was half the size of claimant's hand; three inches wide and two inches tall.

Stegman participated in the interviews of potential witnesses and all had their backs turned or did not see anything but did not recall claimant being upset or hearing raised voices.

The employer believed claimant deliberately punched the door because he had stitches just above the knuckles on the ring area of two fingers, the location of the damage to the door and Alex Riesburg, Two Rivers Glass & Door Project Manager, stated it would take considerable force to cause that damage. (Employer's Exhibit 1) The employer had not previously warned claimant his job was in jeopardy for any similar reasons and discharged him for violating work rules prohibiting deliberate damage to company property, manhandling and safety violations.

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 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).

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. The conduct for which claimant was discharged was an accident. The employer's testimony about who removed the glass was inconsistent and given the door's position and operational problem history, claimant's testimony is credible. The employer has not established claimant acted with anything more than an isolated incident of carelessness or inattention. This is not misconduct. No disqualification is imposed and benefits are allowed.

DECISION:

The May 31, 2013 (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed. The benefits withheld shall be paid, provided he is otherwise eligible.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/css