IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ERIC J RUCKOLDT
Claimant

CAPITAL CITY POWER SPORTS INC
Employer

APPEAL NO. 08O-UI-03976-CT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/13/08 R: 02
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Capital City Power Sports, Inc. filed an appeal from a representative's decision dated February 20, 2008, reference 01, which held that no disqualification would be imposed regarding Eric Ruckoldt's separation from employment. After due notice was issued, a hearing was held in Des Moines, Iowa, on March 25, 2008. The March 26, 2008 decision of the administrative law judge reversed the prior allowance and assessed an overpayment.

Mr. Ruckoldt filed a further appeal with the Employment Appeal Board which, on April 21, 2008, remanded the matter for a new hearing on a finding that Mr. Ruckoldt had not received the hearing notice in sufficient time to participate. Pursuant to the remand, due notice was issued scheduling a telephone hearing on May 7, 2008. Mr. Ruckoldt participated personally and was represented by his mother, Jane Ruckoldt. Exhibit A was admitted on his behalf. The employer participated by Keith Zoellner, General Manager; Tom Reid, Service Manager; Dan Moeller, Dealer/Principal; and Nathan Eaton, Assistant Service Manager. Exhibits One through Four were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Ruckoldt was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Ruckoldt was employed by Capital City Power Sports, Inc. from February 5, 2007 until January 8, 2008 as a full-time service technician. He was discharged as a result of an argument with the shop foreman on January 4, 2008.

On January 4, Neal Chipman, shop foreman, was looking for carpet squares when he found some in Mr. Ruckoldt's work area. Items Mr. Ruckoldt had stacked on top of the squares were moved by Mr. Chipman. When Mr. Ruckoldt discovered that Mr. Chipman had been in his work area, he went to the office to speak with him. When the two did meet, Mr. Ruckoldt told him not to touch his "fucking stuff" again and to ask if he needed something from his work area.

Mr. Chipman stated that the area was work area and he could look where he needed to. Mr. Ruckoldt responded by telling him not to ever get in his "fucking stuff" again. He did not threaten to harm Mr. Chipman.

As a result of the above incident, Mr. Ruckoldt was suspended on January 4. He was provided a written memo advising him that he was being suspended pending investigation of an alleged work rule violation. The notice did not specify what rule he was alleged to have violated or what specific conduct he was alleged to have engaged in. He was directed to leave the premises but refused to do so. He repeatedly asked the employer why he was being suspended and did not leave until the employer threatened to call the police. He was notified of his discharge on January 8.

In making the decision to discharge, the employer also considered the fact that Mr. Ruckoldt had received a verbal warning on December 12, 2007 for inappropriate language. He indicated he was not going to perform "nigger work." The employer felt Mr. Ruckoldt had a problem with his temper as he sometimes yelled at coworkers. While he was on suspension, the employer determined that he had given false information on his application for hire with respect to his criminal background. The employer had not done a background check at the time of hire. Mr. Ruckoldt had not received any written warnings during the course of his employment.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). It appears that the primary reason for Mr. Ruckoldt's discharge was the allegation that he threatened physical harm to Mr. Chipman on January 4. Mr. Chipman's written statement is part of the record but he did not participate in the hearing to be available for examination and cross-examination. Mr. Ruckoldt denied threatening him. Prior to the hearing, the employer was provided a copy of Exhibit A, which is a statement signed by eight of Mr. Ruckoldt's former coworkers. The statement indicated that Mr. Ruckoldt did not threaten Mr. Chipman. The employer did not have any of the eight individuals testify to establish that either they did not sign the document or were coerced into making an untrue statement. Nor was there evidence that the individuals were not at work that day or not in a position to overhear the exchange. In short, the employer did not offer evidence to refute the assertions contained in Exhibit A.

Mr. Ruckoldt was the only person participating in the hearing who was present for the entire exchange with Mr. Chipman. Given his sworn testimony and the unrefuted statement contained in Exhibit A, the administrative law judge concludes that Mr. Ruckoldt did not, in fact, threaten Mr. Chipman. He did, however, engage in an argument with his supervisor. It is unreasonable to expect employees to be docile and well-mannered at all times. Although Mr. Ruckoldt may have been balky and argumentative, he did not deliberately and intentionally act in a manner he knew to be contrary to the employer's interests or standards.

It is noteworthy that the employer's handbook covers disciplinary measures but Mr. Ruckoldt was never written up. This is true in spite of the employer's contention that he had temper tantrums at work and yelled at coworkers. Because he had not been disciplined, he had reason to believe that his conduct was at least tolerable to the employer. Mr. Ruckoldt may well have given false information on the application for hire. The employer had the opportunity to investigate his answers on the application before he was hired. Moreover, a deliberately false statement on the application for hire does not, in and of itself, establish an act of misconduct.

There must be some harm or potential for harm to the employer as a result of the false statement. See 871 IAC 24.32(6).

The administrative law judge does not doubt that Mr. Ruckoldt was an unsatisfactory employee. However, substantial misconduct has not been established by the evidence. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated February 20, 2008, reference 01, is hereby affirmed. Mr. Ruckoldt was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

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Carolyn F. Coleman
Administrative Law Judge

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Decision Dated and Mailed

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