IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

BRENDA S HUNT
Claimant

WESTERN IOWA ENERGY LLC
Employer

APPEAL NO. 11A-UI-04062-H2

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04-18-10
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 25, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 23, 2011 in Carroll, Iowa. The claimant did participate. The employer did participate through Jeanne Sorensen, compliance coordinator. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as an Operations Specialist, full-time, beginning in November 2008 through March 2, 2011, when she was discharged. The claimant was on layoff from April of 2010 through August of 2010 but returned to work when called back by the employer.

The claimant's supervisor, Mike, regularly and routinely called the claimant "stupid" whenever she asked him for clarification or even instructions on how to perform an operation or a task. The claimant had reported to the employer that she found Mike's treatment offensive. The employer did not stop Mike from calling the claimant and others "stupid" or speaking to any of them in a demeaning manner. The claimant had Mike and other employees listed as "friends" on her Facebook page. On February 26, 2011, the claimant posted the following for all her friends to see on her Facebook wall: "Dear Work…please stop hiring stupid people…we have enough already… ." The claimant alleges she did not mean to refer to other employees as "stupid" she was attempting to comment on Mike's continually calling her stupid while at work. The claimant knowingly posted this comment recognizing that people she worked with that she had listed as "friends" would see the comment. The employer discharged the claimant for harassment, or for making false and malicious comments about the company and coworkers. The claimant had no prior discipline for any similar conduct or behavior.

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).

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. While the comment made by the claimant can be interpreted as degrading or demeaning to other employees, the administrative law judge is persuaded that the claimant did not intend her comment to be taken that way. It was merely poor judgment on the part of the claimant to post the comment in a public forum where her coworkers saw the comment. The conduct for which claimant was discharged was merely an isolated incident of poor judgment; and inasmuch as employer had not previously warned claimant about any of the issues leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. 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 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 March 25, 2011 (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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Teresa K. Hillary
Administrative Law Judge

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Decision Dated and Mailed

tkh/kjw