IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

THOMAS M CHITWOOD
Claimant

THE PRINTER INC
Employer

APPEAL NO. 13A-UI-12027-LT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09/29/13
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the October 21, 2013, (reference 01) unemployment insurance decision that allowed benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on November 19, 2013. Claimant participated. Employer participated through human resources generalist, Karen Michael, bindery manager, Dave Warden and production scheduler, Doug Karli.

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 full time as a letter press operator and was separated from employment on September 26, 2013. On that date claimant asked Warden to sign off on a job ticket and Warden told him he needed an updated job ticket. Claimant asked him to print out a new one from his desk, which had a computer and printer. Warden declined and told him, "It's not my job." He lost his temper, raised his voice and left the office saying, "This is fucking bullshit; I know how to do my job." Claimant is a heart surgery patient and had been having foot pain that week so did not want to have to go to the production floor 100 feet away and return to the office. He is deaf in one ear due to working around printing presses his adult life and speaks normally in an elevated voice. He did not call anyone names at any point.

Claimant approached Karli on the production floor near noisy machinery so claimant elevated his voice to be heard. Karli also refused to sign the job ticket as being outside the scope of his job, claimant returned to Warden with a new job ticket and apologized for losing his temper and told him about his foot pain. He told Warden he understood how difficult it is to be a supervisor and get "crap" from both sides. Warden said he was not happy about doing press room supervisor Cory Fergusson's job and if he did not like the way he approved things claimant could take it up with Fergusson and "we can take it outside." Claimant became upset and cursed again pointing his finger at Warden, but did not say, "If you think an old man like me cannot kick your ass, you are wrong." Warden told him to report to human resources. There

claimant apologized and explained again how the pain in his foot impacted his behavior. Warden is under 6 feet tall and under 200 pounds and in his early 30s. Claimant is 6 foot 4 inches and close to 300 pounds and in his late 50s. Claimant was coughing sporadically and audibly wheezing during the hearing. The employer has nothing documented about verbal discussions, alleged incident details or dates. Warden was not discharged for his "take it outside" comment.

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). "Balky and argumentative" conduct is not necessarily disqualifying. *City of Des Moines v. Picray*, (No. __-__, Iowa Ct. App. filed __, 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 argumentative conduct for which claimant was discharged involved inappropriate, poor judgment borne of pain and frustration. Inasmuch as the employer had not previously warned claimant his job was in jeopardy for similar issues as that 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. Furthermore, with or without previous verbal counseling, since Warden seemed to prod claimant during their interactions, especially with the "take it outside" comment, and since the consequence was more severe than Warden received for a similar or more serious offense, the disparate application of the policy cannot support a disqualification from benefits. Benefits are allowed.

DECISION:

The October 21, 2013, (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/css