IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

CARRELL M LOWE
Claimant

BOSTON WINDOW CLEANING INC
Employer

APPEAL NO. 13A-UI-12764-HT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/06/13
Claimant: Respondent (1)

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment
871 IAC 24.10 – Employer Participation

STATEMENT OF THE CASE:

The employer, Boston Window Cleaning, Inc. (Boston), filed an appeal from a decision dated November 8, 2013, reference 01. The decision allowed benefits to the claimant, Carrell Lowe. After due notice was issued a hearing was held by telephone conference call on December 9, 2013. The claimant participated on her own behalf. The employer participated by Manager Janis Kinney and Regional Manager Chris Nowack

ISSUES:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits, whether the claimant is overpaid unemployment insurance benefits and whether the employer's account is charged due to non-participation at the fact-finding interview.

FINDINGS OF FACT:

Carrell Lowe was employed by Boston from August 16, 2012 until October 16, 2013 as a full-time cleaner. At the time of hire she received a copy of the employee handbook. The disciplinary policy provides for discharge of any employee who had received three written warnings during a 12-month period.

Ms. Lowe received written warnings on April 2, 2013, for absenteeism, August 1, 2013, for failing to wear required safety equipment and September 20, 2013, for disruptive behavior with her supervisor.

Regional Manager Chris Nowack forwarded the disciplinary records to the corporate office September 20, 2013, with a recommendation for discharge. The corporate office finally responded with approval of the recommendation shortly before October 16, 2013. Ms. Nowack then sent a letter to Ms. Lowe notifying her she was discharged.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

871 IAC 24.32(8) provides:

> (8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The claimant was discharged due to receiving three written warnings in a 12-month period. Although the regional manager made the recommendation to discharge in a timely manner, the corporate office, which must approve or deny the recommendation, did not respond for more than three weeks after the final warning. The employer was not certain why there was such a delay but could only surmise the corporate office was short-handed and simply did not get around to it.

The administrative law judge does not dispute the claimant violated the company policy when she accumulated three written warnings in a 12-month period. But the employer's substantial delay in carrying through with the discharge put the receipt of the third warning beyond a current act of misconduct. Under the provisions of the above Administrative Code section, this was not current and for that reason alone, disqualification may not be imposed.

DECISION:

The representative's decision of November 8, 2013, reference 01, is affirmed. Carrell Lowe is qualified for benefits, provided she is otherwise eligible.

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Bonny G. Hendricksmeyer
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs