IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

CORTNEY R SCHMIDT
Claimant

SMITH FERTILIZER AND GRAIN COMPANY
Employer

APPEAL NO: 13A-UI-08499-S

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/09/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The employer appealed a department decision dated July 11, 2013, reference 01, that held the claimant was not discharged for misconduct on June 11, 2013, and benefits are allowed. A hearing was held in Des Moines, Iowa on September 10, 2013. The claimant participated. Max Smith, Owner;, Sharon Smith, Business Director; Mark Young, Agronomy Manager; and Kim Gross, HR Manager, participated for the employer. Employer Exhibits 1 - 6 and Claimant Exhibit A was received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The claimant began employment on July 5, 2011, and last worked for the employer as a full-time market director/agronomy assistant, on June 11, 2013. She received the employer policies in an employee handbook. The policy provides for written disciplinary warnings.

The employer has about an eighty employee workforce. Claimant worked at the Pleasantville, Iowa location. She had two supervisors. Mark Young when she worked agronomy and Sharon Smith when she worked marketing. The agronomy season involved a concentration of that work during the busy season April to August.

The employer terminated claimant for failure to perform job duties and leaving work without permission on June 11, 2013. The employer never issued claimant a written disciplinary warning that her job was in jeopardy for any of the termination reasons offered in the hearing. While it offered documents as evidence of verbal counseling(s), it never had claimant sign an acknowledgement of any such counseling.

Claimant admits to a verbal counseling in April 2013 for not working enough hours, but nothing was said her job was in jeopardy. Claimant had been given permission on May 24 to be off work on Saturday, May 25 by manager Young, but the employer later re-canted it, and claimant came into work that day.

Claimant was scheduled to work 7:30 a.m. to 5:00 p.m. Monday through Friday with Saturdays as scheduled. Claimant signed an employment agreement on September 18, 2012. After this agreement, the employer increased claimant's pay in October/November and added agronomy work duties.

The employer had an issue with claimant failing to complete certain procedures by the end of the workday on June 10. It had an issue with claimant failing to make a part delivery to Centerville on June. Claimant offers she had been working on the procedures and she was given no deadline to complete on June 10. She was unable to locate her supervisor before she left work. She agreed to make the part delivery if it was there by 11:00 a.m., and it was too late for her to do it when it came. She believed her manager had made another arrangement for delivery.

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.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on June 11, 2013.

While the employer is correct that it can terminate an employee without issuing a written warning, the evidence must clearly establish some intentional and/or deliberate act has occurred. Although manager Smith had concerns about claimant's progress on completing the procedures, it never got to a point there was any written warning was issued with a specific deadline date. This project had gone on for months and employer failed to establish with sufficient advance notice that June 10 was the completion date.

Having two supervisors caused claimant some understandable confusion about who she needed to go to for time-off from work and scheduled work, especially Saturdays. The evidence does not show claimant would select one supervisor over the other to intentionally cause confusion when she wanted to be off work.

Given the primary employer concern claimant was not putting in enough work hours, the parts delivery issue on June 8 is minimal. While the employer did present some evidence claimant failed to work the hours required to do the job, it did not issue a written disciplinary warning drawing a line that if it continued she would be terminated. Job disqualifying misconduct is not established.

DECISION:

The department decision dated July 11, 2013, reference 01, is affirmed. The claimant was not discharged for misconduct on June 11, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson
Administrative Law Judge

_____
Decision Dated and Mailed

rls/css