IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JACK W VOIGHT
Claimant

DONOHOO STEEL TREATING CO
Employer

APPEAL NO. 08A-UI-00475-LT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/23/07 R: 04
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 11, 2008, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on January 30, 2008. Claimant participated. Employer participated through Bill Donohoo, Jim Clausen and Chris Zubroski. Claimant's Exhibit A was received.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time furnace operator from January 12, 2004 until December 11, 2007 when he was discharged. On Friday, December 7 after all supervisors had left at 4:30 p.m. claimant, another furnace operator and a furnace operator assistant completed the loads they could run during that shift and performed all tasks to idle the furnaces for the weekend when no one was on duty. The idle checklist and all related duties were completed by about 7:45 p.m. and claimant turned off the lights so he could see to check pilot lights. Claimant still had not taken a lunch break by then and a half hour is automatically deducted for each day's lunch break. Employer also authorizes employees to take lunch at other times of the shift. (Claimant's Exhibit A). At about 8:00 p.m. claimant's wife called and told him she was locked out of the house with the dog. She had walked across the street to use the phone. Claimant, as senior furnace operator, notified the two other employees that he was leaving to let her in but did not contact a supervisor by phone since those calls were usually made for production issues. He left about 8:05 p.m. to drive the three or four blocks to his house, unlocked the house, made sure his wife and the dog were safely inside, and returned to work at about 8:27 p.m. to clock out. Zubroski was returning a company vehicle to the parking lot at the time and saw claimant but said nothing. He did not write on his timecard that he did not take lunch since he used that time to unlock the house. Claimant had no idea his job might be in jeopardy for this reason and had never been warned about similar conduct in the past.

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).

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. Given the circumstances, this conduct was merely an isolated incident of a reasonable vague policy misunderstanding without mal intent, 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 January 11, 2008, reference 01, decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible. The benefits withheld effective the week ending December 29, 2007 shall be paid to claimant forthwith.

_____
Dévon M. Lewis
Administrative Law Judge

_____
Decision Dated and Mailed

dml/css