IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ERIC SWANK
Claimant

ARCHITECTURAL ARTS INC
Employer

APPEAL NO. 08A-UI-03000-ET

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02-24-08 R: 02
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 20, 2008, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 10, 2008. The claimant participated in the hearing. Jeramy Bergwall, Production Foreman and Mike Burgduff, Finish Supervisor, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time finisher for Architectural Arts from July 24, 2006 to February 21, 2008. On February 16, 2008, the claimant ruined a product the employer was running because there were color streaks and runs all over the product. He was the only one running that product and it could not be remade or saved by sanding. The claimant admits he made the error because he tried to spray the project horizontally instead of vertically and also testified it was a difficult product to spray and he knew he would "get in trouble" after seeing the finished product so he called his boss and said it did not look right. The employer issued a verbal warning to the claimant about the ruined product February 18, 2008. On February 20, 2008, the claimant overslept and called the employer around 9:30 a.m. but was told if he could not be there at 7:00 a.m. he should not bother to come in and the employer considered him to be a no-call/no-show and terminated his employment for a culmination of issues February 21, 2008. The claimant was also a no-call/no-show October 31, 2007, and received a verbal warning. On October 8, 2007, he received a verbal warning for arguing with another employee; on October 9, 2007, he received a verbal warning for cleaning his paint gun outside the back of the building when it still had paint, rather than just water, in it; on December 28, 2007, he received a verbal warning for failure to produce a quality product and not getting along with others; and on February 11, 2008, he received a verbal warning for having alcohol at work. He was not drinking and it was not uncommon for employees to keep alcohol at work but the employer told him that another incident would result in termination. The claimant also had a

conflict with Finish Supervisor Mike Burgduff and Mr. Burgduff believed the claimant did not listen to him, did not want to do what he was told, and "pushed back" when told to do something by Mr. Burgduff.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). While the claimant made a mistake with the product February 16, 2008, his error does not appear to be intentional and he thought he was doing something more efficient than the usual procedure. Additionally, the finishing product was difficult to work with and there had been complaints about the finisher in the past. He had been verbally warned about his performance October 9 and December 28, 2007, and received verbal warnings about getting along with others October 8 and

December 28, 2007, and having alcohol on the premises February 11, 2008. Finally, the employer cited attendance as one issue considered in the termination but the claimant denies being a no-call/no-show October 31, 2007, and overslept and was late February 20, 2008. Although those absences were unexcused they do not rise to the level of disqualifying job misconduct as defined by Iowa law. Similarly, while the claimant made some errors and mistakes in judgment the administrative law judge cannot conclude that his actions rise to the level of disqualifying job misconduct. Therefore, benefits are allowed.

DECISION:

The March 20, 2008, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder
Administrative Law Judge

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Decision Dated and Mailed

je/css