IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

LELAND E MARTIN
Claimant

CASEYS MARKETING COMPANY
Employer

APPEAL NO. 08A-UI-03070-LT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/24/08 R: 01
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 18, 2008, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on April 14, 2008. Claimant participated with Aaron Coats, Cashier, and Bob Bell, Customer. Employer participated through Debra Holz, District Manager, and Sandra Cullen, Area Supervisor.

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 clerk from November 5, 2003 until February 21, 2008 when he was discharged. Cullen and Holz arrived at the store and found claimant wearing blue jeans and no visor. Holz told him he was out of uniform and he pulled a visor from a drawer and put it on. She told him that he was not wearing the appropriate attire of either khaki or black pants. He said he did not have any clean uniform pants (three pair dark blue and one pair black) and attempted to tell Holz that at minimum wage he did not make enough money to afford additional uniform pants and could not do laundry because the water pipes in his house were frozen; but she interrupted and told him if he was old enough to have a job he was old enough to show up in the correct uniform and instructed him to go home and change. He said he would need two hours to do laundry and then changed his mind and said he was taking a vacation day. Coats was present, heard most of the communication, worked with claimant regularly and did not ever hear store manager Darwin Otto send him home for uniform violations. Although there was a general staff meeting in November 2007 about, among other things, the dress code, no representative of the employer had ever warned claimant either verbally or in writing his job would be in jeopardy for any uniform violations. Customer Bob Bell was also in the store at the time and filed a complaint card after hearing an unknown female yelling at claimant and "chewing him out." After claimant left the store he called Otto and asked to take a vacation day, which Otto approved. No one contacted claimant thereafter to tell him

the vacation day approval was rescinded so he did not return to work after doing laundry. Employer did not provide Otto to offer testimony.

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. Inasmuch as employer had not previously warned claimant about the issue 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. The inability to afford multiple uniforms or even coin laundry costs on minimum wage and the inability to hand wash clothes due to frozen water pipes are not indications of intentional or negligent conduct. 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 March 18, 2008, reference 01, decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/css