IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ROBERT M HAWLEY
Claimant

DEN HARTOG INDUSTRIES INC
Employer

APPEAL NO. 13A-UI-09328-LT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/14/13
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the August 7, 2013, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 18, 2013. Claimant participated. Employer participated through human resources generalist, Christine Koerselman and night shift manager, Jason Bork.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a finishing operator from 2005, and was separated from employment on July 12, 2013. On July 9 he asked night shift maintenance worker and master electrician Perry Nelson about a problem he was having with a blower. Nelson told him he would not be able to help without looking at it and told him to bring it in. On July 11, claimant brought the blower from home. At about 2:40 a.m. Nelson approached claimant, said he might have a bit of time and would check with other maintenance worker Alex Cortez about going on break. Normal breaks for claimant are generally near 9:00 p.m., 12 midnight, or 3:00 a.m. depending on oven cycle times. However the oven claimant was working on was not cycling since he was assigned light duty from a workers' compensation injury to pull parts from the oven and take them outside. There is no requirement to check with a supervisor before taking a break. He did not see a supervisor in the large area on the way to the maintenance area. Nelson and claimant went on break together and Nelson fixed the problem by reconfiguring the wires well within 15 minutes. When he left carrying the blower he stopped by the break room and found immediate supervisor Travis Shrier. He spoke with Shrier and Robert Vargo about a work-related issue and went back to his work area. A half hour before the shift end Bork and day plant manager Tony Shuver called him to the office and asked him about the incident.

The employer's policy allows employees to work on personal items if management is aware and grants permission. The claimant's only other warning was related to not reporting that a forklift

got stuck on June 21, 2013. Claimant and a coworker did report the damage done while trying to get it unstuck but were told they should have called a supervisor to get the machine unstuck rather than attempt it themselves.

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 Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. 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. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. 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." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the incident under its policy. The conduct for which claimant was discharged was merely an isolated incident of poor judgment and 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. A warning about getting help to free a forklift is not similar to failure to request permission to work on a personal item during break time and the employer's simple accrual of a certain number of warnings counting towards discharge does not establish repeated negligence or deliberation and is not dispositive of the issue of misconduct for the purpose of determining eligibility for unemployment insurance benefits. Benefits are allowed.

DECISION:

The August 7, 2013, (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/css