IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

ANTHONY C KAUFFMAN Claimant **BEMIS COMPANY INC** Employer	**APPEAL 15A-UI-06183-EC-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 05/10/15** **Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the May 22, 2015, (reference 01) unemployment insurance decision that denied benefits based upon a discharge for misconduct. The parties were properly notified about the hearing. A telephone hearing was held on July 2, 2015. The claimant, Anthony Kauffman, participated. The employer, Bemis Company Inc., did not participate in the hearing. Documents from the fact-finding level were admitted into the record.

ISSUE:

Was the separation from employment a discharge for 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 slitter operator from June of 2012, until this employment ended on May 1, 2015, when he was discharged for violating a company safety policy.

The claimant performed a specific task, cutting one and one-half inches off each edge of plastic tube stock, then sending a single layer of plastic film for printing, and then cutting it again for shipping. His work generated dumpsters of waste. As a general rule, the claimant and his coworkers dumped the waste by placing the dumpster onto forks, pushing a button to close the garage doors, and then waiting while the hydraulics operated automatically.

For a few weeks during the month of April, 2015, the garage doors were broken. The claimant and his coworkers used an alternate process, just pushing the button to operate the hydraulics. The claimant was not notified that the garage doors were working again before April 30, 2015.

On April 30, 2015, the claimant utilized the alternate process, pushing the button without closing the garage doors. The next day, on May 1, 2015, the claimant's employment was terminated for violating the employer's safety policy. He admitted that he bypassed the garage door when he dumped his waste during his work shift on April 30. He did not know that this action would lead to his immediate termination. He had not been previously warned of any such possibility. As far

as the claimant knew, he and all his coworkers had been following the same process for the past few weeks while the garage doors were not working.

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. Benefits are allowed.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

> (4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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 simply a continuation of the process that he and his coworkers used for the previous few weeks while the garage doors were broken.

The employer had not previously warned the claimant about the issue leading to the separation. In fact, the employer acquiesced in the process the claimant used for a certain period of time. The claimant did not know that any policies had changed. He was not informed that the garage doors were working again as of April 30.

The employer did not appear to participate in the hearing. The employer did not submit any exhibits for the administrative hearing. Therefore, the employer did not meet its 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. Training or general notice to staff about a policy is not considered a disciplinary warning.

DECISION:

The May 22, 2015, (reference 01) decision is reversed. The claimant was discharged for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

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Emily Gould Chafa
Administrative Law Judge

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Decision Dated and Mailed

ec/css