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

JESSICA L HOAG
Claimant

APPEAL NO. 13A-UI-01923-VST

ADMINISTRATIVE LAW JUDGE DECISION

LINK SNACKS INC
Employer

OC: 01/20/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the representative's decision dated February 18, 2013, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice was issued, a hearing was held by telephone conference call on March 14, 2013. The case could not be completed at that time and the hearing was rescheduled for March 21, 2013. The claimant participated personally. The employer participated by Brent Benson, the operations manager; Cass Minear, the operations supervisor; and Steven Brown, Human Resources. The record consists of the testimony of Cass Minear; the testimony of Brent Benson; the testimony of Jessica Hoag; and Employer's Exhibits 1-6.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge makes the following findings of fact:

The employer distributes beef jerky. The claimant was hired on February 7, 2012, as a full-time forklift operator. Her last day of work was January 22, 2013. She was terminated on January 22, 2013.

The incident that led to the claimant's termination occurred on January 21, 2013. Near the end of the shift the employees, including the claimant, were notified that they were to start cleaning up the warehouse. The claimant and another employee named Mike did not follow this instruction and instead headed toward the locker room. Jeff, the team lead, and the individual that had told the employees to start cleaning the warehouse, followed the two employees to the locker room. Another employee named Ashley was already in the locker room.   She had finished her cleaning duties.

Jeff asked the claimant and Mike why they had not followed his instructions. The claimant remained quiet while Mike did the talking. The claimant and Mike then went home. The

employer decided to write up Mike and to terminate the claimant. The employer took into account several warnings that had been given to the claimant in the past. On July 11, 2013, the claimant was given a second warning for insubordination. On January 14, 2013, the claimant broke a work rule and when told about it she laughed and said "whatever." (Exhibit 1)

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(8) provides:

> (8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Insubordination, which is the continued failure to follow reasonable instructions, constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990) The employer has the burden of proof to show misconduct.

The claimant is not eligible for unemployment insurance benefits. The greater weight of the credible evidence is that the claimant and another employee deliberately ignored the request of supervisor to clean up the warehouse as the shift was coming to an end. The claimant and another employee did not "pick up a broom" but rather went to the locker room before going home for the day. The employer's testimony that the claimant knew she was supposed to clean the warehouse is accepted. There are other examples in the claimant's prior work history with the employer that show she had been disciplined for insubordination and for failing to follow work rules. This prior behavior supports the conclusion that the claimant was insubordinate on January 21, 2013. Insubordination is misconduct. Benefits are denied.

DECISION:

The unemployment insurance decision dated February 18, 2013, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Vicki L. Seeck
Administrative Law Judge

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Decision Dated and Mailed

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