IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

BRIAN G LUNDBERG
Claimant

VAN DIEST SUPPLY CO
Employer

APPEAL NO. 10A-UI-10355-HT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/13/10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer, Van Diest Supply, filed an appeal from a decision dated July 16, 2010, reference 01. The decision allowed benefits to the claimant, Brian Lundberg. After due notice was issued, a hearing was held by telephone conference call on September 8, 2010. The claimant participated on his own behalf and with witness Jason Brown. The employer participated by Personnel Director Carolyn Cross and Director of Manufacturing Clark Vold. Exhibit One was admitted into the record.

The claimant elected to use a cell phone and was advised it was not recommended. He was notified if the connection was lost during the hearing, the administrative law judge would not call back until he contacted the Appeals Section to indicate the cell phone was working again or to provide the number of another phone, but the hearing would proceed without his participation and might very well be over by the time he called back. The connection was lost at 1:22 p.m. By the time the record was closed at 1:24 p.m., the claimant had not contacted the Appeals Section to rejoin the hearing.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Brian Lundberg was employed by Van Diest Supply from April 4, 2008 until June 11, 2010 as a full-time production operator. He received a copy of the employee handbook on April 8, 2008. The policies call for disciplinary action up to and including discharge for disrupting work, unauthorized use of company time or causing, creating, or participating in disruption of any kind during working hours.

On June 11, 2010, Safety Coordinator Wes Dicken went to the production area and did not find anyone at their workstation. He went into a control room and as he opened the door, a bolt fell onto the floor. The bolt had been placed on top of the door so that it would fall when the door

was opened. The claimant and the other members of the work team were in the control room and exited out the back when alerted by the sound of the bolt hitting the floor.

Mr. Dicken questioned the claimant and others when he found them at their workstations. It was finally admitted they had been taking an extra break in the air conditioned control room because the air handlers in the production area had failed. Mr. Lundberg maintained it was merely a joke on the team leader but admitted he had put the bolt on top of the door to act as an alert.

Director of Manufacturing Clark Vold was notified of the incident and he interviewed the work team as well. He took the matter to the vice president and it was decided to discipline all the team members but the claimant would be discharged for instigating the unauthorized break and placing the bolt to act as a warning.

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.

Because the claimant disconnected prior to giving testimony, the administrative law judge must conclude he was guilty of taking an unauthorized break and setting the bolt on the door to act as an alert. But, it is curious the employer disciplined him by discharge and the others were issued lesser disciplinary action. The fact he may have “instigated” the break is not relevant. All the

team members were in the control room rather than at their workstations, thus wasting company time equally, and being equally guilty of violating the company rules.

The issue is not whether the employer made a correct decision in separating the 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 benefits are two separate decisions. *Pierce v. IDJS*, 426 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. IDJS*, 351 N.W.2d 806 (Iowa App. 1984).

The employer has not made a convincing argument that the claimant's conduct was any more egregious in the final analysis than the others who were not fired. The employer has failed to meet its burden of proof to establish substantial, job-related misconduct sufficient to warrant a denial of unemployment benefits.

DECISION:

The representative's decision of July 16, 2010, reference 01, is affirmed. Brian Lundberg is qualified for benefits, provided he is otherwise eligible.

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Bonny G. Hendricksmeyer
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw