IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

DALE A HAYES Claimant **EAGLE WINDOW & DOOR MFG** Employer	**APPEAL 14A-UI-10644-L** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 08/31/14** **Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from the September 30, 2014, (reference 03) unemployment insurance decision that allowed benefits because of a discharge from employment. After due notice was issued, a hearing was held on February 23, 2015, in Dubuque, Iowa. Claimant participated and was represented by Natalia Blaskovich, Attorney at Law. Employer did not respond to the hearing notice instruction and did not participate. Claimant's Exhibits 1 through 8 were received.

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 as a full-time maintenance technician from July 29, 1987, through September 5, 2014. His last day of work was August 24, 2014, when he was suspended. The employer accused him of violating a lock-out/tag-out handbook safety rule on Friday, August 22, 2014. (Claimant's Exhibit 1, 2) That evening, he and another maintenance technician Kevin Munson were working, but Munson was at a different facility. Three machines were broken down and claimant had all three of his assigned and available locks on them. He received a call for a fourth machine and when he went to the area he found a lock belonging to maintenance technician Bill Lade was on it. He looked at the machine without touching it. Second shift supervisor Don Ernst and team leader Ryan Hickson told him he could not work on that machine since that was not his lock. Within five minutes Munson arrived and took over on the machine. Claimant called his supervisor at home about 7 p.m. to report what had happened and was told the priority was to get the machines up and running regardless of whose lock was on the machine. Claimant reported a half-hour early on Monday, August 25, 2014, and told safety department personnel what had happened and requested additional locks. They said it would not be a problem but suspended him nevertheless.

Shortly after a work-related injury in 2011, claimant was given two written warnings; one for a machine he had not worked on or touched but was talking to another technician trying to help them; and another for forgetting to remove a lock after the work was complete and the machine was operational. Other coworkers who had done similar things had not been warned and the warning was at the supervisor's discretion. His attorney at the time, Emilie Roth Richardson of Dubuque, wrote a letter to the employer's attorney Timothy Wegman of West Des Moines, asking that he counsel the employer about disparate treatment of unsupported warnings. His only other warning was for leaving work early due to an emergency medical condition. (Claimant's Exhibit 3)

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.

Iowa Admin. Code r. 871-24.32(1)a provides:

> Discharge for misconduct.
>
> (1) Definition.
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> 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 impose discipline up to or including discharge for the incident under its policy. The conduct for which claimant was discharged was not related to violation of any safety rule but appears to be related to retaliatory application of discipline where others would not be disciplined, let alone discharged, in a similar situation. Even had claimant violated a policy, since the consequence was more severe than other employees received for similar conduct, the disparate application of the policy cannot support a disqualification from benefits. The employer 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. 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. A 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.

DECISION:

The September 30, 2014, (reference 03) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs