IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JASON A HANNA
Claimant

TPI IOWA LLC
Employer

APPEAL NO: 14A-UI-12478-ET

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/02/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 24, 2014, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 24, 2014. The claimant participated in the hearing with Attorney John Billingsley. The employer did not respond to the hearing notice by providing a phone number where it could be reached at the date and time of the hearing as evidenced by the absence of a name and phone number on the Clear2There screen showing whether the parties have called in for the hearing as instructed by the hearing notice. The employer did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time mold maintenance technician for TPI Iowa from March 13, 2013 to November 4, 2014. He was discharged after being accused of taking another employee's lunch.

The employer has two break rooms and no refrigerators are provided. There are two long conference tables in each room and employees put their lunches on the conference tables when they arrive for work.

One day around the end of October 2014 the claimant went to work with a blue igloo cooler and a plastic sack containing his lunch. He set his cooler on the floor and his plastic sack containing a Tupperware container with a blue lid and a bottle of yellow Gatorade on the table. At 4:30 p.m. he went in the break room to retrieve his lunch sack and cooler. He found an empty plastic sack on the floor and picked it up because the one he was using that day had a hole in it. He grabbed his cooler and the plastic sack holding his Tupperware container and yellow Gatorade, clocked out, and went home. When he arrived at home and opened his

Tupperware container to clean it he found a half-eaten taco inside and realized it was not his lunch sack. He threw the taco away, cleaned out the Tupperware container and took it in the following day in a separate sack and set it on the table in the break room. Four to six days later the claimant was called to the office and the employer showed him video of him taking another employee's lunch sack. Since both lunch bags had Tupperware containers with blue lids and yellow Gatorade bottles he tried to explain to the employer it was a simple mistake but the employer stated that because he did not report the incident the next day it could not give him a reprimand but had to terminate his employment. The claimant had not received any previous verbal or written warnings during his tenure with the employer.

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.

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).

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant was accused of stealing a coworker's lunch when in fact the situation was a simple misunderstanding involving an easy to make mistake by the claimant. Most of the employees set their lunches on the two conference tables in the break room. In the claimant's estimation, there were at least 20 Hy-Vee plastic sacks on the table, including his own. It is not unreasonable to believe he accidentally picked up another employee's Hy-Vee sack containing another Tupperware container with a blue lid and yellow Gatorade. Understandably, the claimant did not realize his mistake until he returned home that evening and went to clean out his lunch bag and found the half-eaten taco inside. He cleaned the container and took it back to work the following morning and set the sack it was in on the conference table. He did not deliberately take the Tupperware container and did not keep the container after realizing it was not his. The fact that he returned the Tupperware container and Gatorade bottle the next day indicates he had no intention of stealing those items but made a simple mistake.

When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant does not establish disqualifying job misconduct as that term is defined by Iowa law. The employer has not met its burden of proof. Therefore, benefits are allowed.

DECISION:

The November 24, 2014, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

_____
Julie Elder
Administrative Law Judge

_____
Decision Dated and Mailed

je/can