IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JOYCE LEPLEY
Claimant

HY-VEE INC
Employer

APPEAL NO. 13A-UI-12068-BT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09/29/13
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Joyce Lepley (claimant) appealed an unemployment insurance decision dated October 21, 2013, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 20, 2013. The claimant participated in the hearing. The employer participated through Karla Heffron, Assistant Vice-President of Warehousing; Rich LaFollette, Manager of Fleet and Perishables; Dave Carney, Forklift Operator; and Cathy Hood, Employer Representative. Assistant Director of Human Resources Jaime Aulwes was present for the hearing but did not participate. Employer's Exhibits One through Five were admitted into evidence.

ISSUE:

The issue is whether the claimant was discharged for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 6, 2010 to work in the employer's distribution center. At the time of her termination on October 1, 2013, she worked as a part-time battery changer in the maintenance department. The claimant was discharged for overriding two safety procedures on September 30, 2013 which resulted in a two-ton battery falling to the floor from the fourth level of the battery rack. No one was hurt but the battery exploded as it hit the floor and acid went everywhere. The battery cost $3,500.00 and the employer discharged the claimant due to the nature and severity of the accident.

Although she had never received any safety warnings, there was a previous issue that same night wherein another smaller battery fell onto the floor. The claimant was trying to replace the battery of a pallet jack and it was not lined up correctly but she kept pushing it until it fell. She testified this happens frequently and said the battery was not damaged.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-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. 871 IAC 24.32(1)**.**

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The issue is not whether the employer made a correct decision in separating 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 insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 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. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

The claimant was discharged on October 1, 2013 for a serious accident. Although the record confirms she was trying to hurry, there is no evidence of a deliberate disregard of the employer's interests. Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v Iowa Department of Job Service*, 391 N.W.2d 731 (Iowa App. 1986). The employer has failed to prove disqualifying misconduct. Benefits are therefore allowed.

DECISION:

The unemployment insurance decision dated October 21, 2013, reference 01, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Susan D. Ackerman
Administrative Law Judge

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Decision Dated and Mailed

sda/css