IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

STEVEN R MEEKER
Claimant

JEFFERSON COUNTY HOSPITAL
Employer

APPEAL NO. 10A-UI-14772-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 08/22/01
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Jefferson County Hosptial (employer) appealed a representative's October 25, 2010 decision (reference 01) that concluded Steven Meeker (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 14, 2010. The claimant participated personally. The employer participated by Tony Webb, Materials Manager; Nanette Conger, Human Resources Manager/Administrative Assistant; and Eugene Irwin, Chief Financial Officer.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on December 7, 2006, and at the end of his employment was working as a full-time clerk. The claimant signed for receipt of the employer's handbook on December 7, 2006. The handbook contained a progressive disciplinary system with the normal progression being verbal, written, probation, and termination.

The handbook indicated that personal use of the employer's computer should be kept to a minimum. The claimant saw the materials manager using the computer to look at news and weather. Other employees used the computer for personal business. The claimant heard that some employees were reprimanded for spending time on Facebook. The employer issued the claimant a letter on March 5, 2009, regarding his performance. The employer did not issue the claimant any warnings during his employment, but from time to time talked to him about his performance and temper.

In July 2010, some nurses wanted information about ordering shortly before the claimant was to leave. The claimant knew that the matter would take about an hour to research. He asked the assistant to help the nurses. The nurses often had trouble keeping track of ordering in their

department. The assistant sent the nurses an e-mail containing information that the nurses need to figure out why they ordered items more than once. On August 5, 2010, some nurses asked the claimant questions. He referred them to the e-mail for answers. On August 12, 2010, the employer noticed that the claimant had used the company computer to look at news, weather and sports. On August 13, 2010, the employer terminated the claimant for inappropriate conduct with the nurses and using the computer to access news, weather, and sport sites.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job -elated misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as employer had not

previously warned claimant about any of the issues leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. In this case the employer did not issue the claimant any real warnings—none that indicated any further action by the employer if the behavior continued. The employer did not provide sufficient evidence of work-related behavior that would rise to the level of misconduct. Benefits are allowed.

DECISION:

The representative's October 25, 2010 decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw