IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DEREK M FROCK
Claimant

HY-VEE INC
Employer

APPEAL NO. 09A-UI-07612-NT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/05/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a May 13, 2009, reference 02, representative's decision that denied benefits based upon his separation from Hy-Vee, Inc. After due notice a telephone conference hearing was scheduled for and held on June 11, 2009. The claimant participated and testified on his own behalf. Although duly notified the employer did not respond to the hearing notice and did not participate.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant was employed as a part-time order puller for Hy-Vee, Inc. from December 1, 2008 until April 6, 2009 when he was discharged from employment.

Mr. Frock was discharged when he could not meet the employer's production expectations. The claimant attempted to the best of his ability to perform the duties of his job but was unable to meet the employer's time goals on an acceptable level. The claimant did not engage in idol talk or unproductive behavior. The claimant is unsure as to how the employer set its time goals, what factors were considered and also believes that the employer did not take into consideration other factors such as distance to retrieve groceries, interference from other individuals attempting to fill their own orders and other factors. The claimant was allowed to work over three hours his final day before being discharged.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

The evidence in the record establishes that the claimant was discharged when he was unable to meet time/production goals that had been set by the employer. Mr. Frock testified under oath that he attempted to the best of his ability to meet the time/production goals but was unable to do so often enough to retain employment. The claimant testified that he did not engage in idol conduct or visiting with other workers but attempted at all times to perform his duties to the best of his ability.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

Allegations of misconduct 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. See 871 IAC 24.32(4).

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.

For the reasons stated herein the administrative law judge concludes the employer has not sustained its burden of proof in establishing intentional disqualifying misconduct. Benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated May 13, 2009, reference 02, is reversed. The claimant was dismissed under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements.

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Terence P. Nice
Administrative Law Judge

_____
Decision Dated and Mailed

pjs/pjs