IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

CHRISTIAN M PICKENS
Claimant

UNCLE ROE'S
Employer

APPEAL NO. 12A-UI-12582-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09/23/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Uncle Roe's (employer) appealed a representative's October 10, 2012 decision (reference 01) that concluded Christian Pickens (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 November 16, 2012. The claimant participated personally. The employer participated by April Hammack, Owner. The employer offered and Exhibit One was received into evidence.

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 considered all of the evidence in the record, finds that: The claimant was hired on January 3, 2011, and at the end of his employment he was working as a part-time line cook. The claimant signed for receipt of the employer's handbook on December 1, 2011. In a meeting with the employer on June 13, 2012, the claimant told the employer that he did not feel comfortable being an assistant manager and would like to return to his job as a line cook. The employer granted the claimant's request. During the claimant's employment he was absent because his daughter was taken by helicopter to a hospital and his grandmother passed away. The employer did not issue the claimant any written warnings for absenteeism.

On September 18, 2012, the claimant called his supervisor and asked for the day off. The supervisor granted the claimant's request. There was a problem with the communication of this request to the employer and the employer thought the claimant abandoned his job. The employer prepared a final warning to issue to the claimant when the employer saw the claimant again. The employer granted the claimant's request to have September 19 and 20, 2012, off.

On September 19, 2012, the claimant stopped by and picked up his paycheck. The employer did not talk to the claimant about his absence on September 18, 2012, or issue him the prepared warning. The claimant recorded from the posted schedule that he was supposed to

be at work at 5:00 p.m. on September 21, 2012. On September 21, 2012, the claimant arrived at work at 5:05 p.m. The employer told the claimant he was supposed to be at work at 4:00 p.m. and terminated him. The claimant looked at the schedule again before he left. The schedule indicated he was supposed to be at work at 5:00 p.m. on September 21, 2012.

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). 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 related 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.

If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). The employer had the power to present testimony but chose to provide written statements. The statements do not carry as much weight as live testimony because the testimony is under oath and the witness can be questioned. The employer did not provide first-hand testimony at the hearing and, therefore, did not provide sufficient eye witness evidence of job-related misconduct to rebut the claimant's denial of said conduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's October 10, 2012 decision (reference 01) is affirmed. The employer has not met its 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/pjs