

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ERIC G SLOPPY
Claimant

APPEAL NO. 15A-UI-03776-N-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FISHER CONTROLS INTERNATIONAL LLC
Employer

OC: 02/22/15
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Fisher Controls International LLC filed a timely appeal from a representative's decision dated March 16, 2015, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on April 29, 2015. The claimant participated. The employer participated by Ms. Tammy DeJong, Labor Relations Manager and Mr. Brook Clingerman, Shipping Department Supervisor. Employer's Exhibits A, B and C were admitted into evidence.

ISSUE:

The issue in this matter is whether the evidence in the record establishes intentional misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all the evidence in the record, the administrative law judge finds: Eric Sloppy was employed by Fisher Controls International LLC from October 3, 2005 until December 1, 2014 when he was discharged from employment. Mr. Sloppy worked as a full-time receiving department employee and was paid by the hour. His immediate supervisor was Brook Clingerman.

The claimant was discharged on December 1, 2014, based upon an incident that had taken place on Tuesday, November 25, 2014. On that date, company security cameras showed the claimant placing a number of discarded wood and metal pieces into the back of his personal pickup truck and leaving the premises with the discarded items. The removal of the discarded items had taken place shortly after the claimant's work shift had ended that day and the removal of the items took place in an open area that could be observed by remaining company employees and or management.

Mr. Sloppy believed that he had received verbal permission from his immediate supervisor to remove the discarded items because in the past he had asked for verbal permission to remove similar discarded items and believed that his supervisor had given permission to remove the items and the claimant had done so without any objections from his supervisor or other

management. Plant rules prohibit removal of any material, equipment, records or other company property or property of other employees from company premises without authorization. The prohibition from removing company property is listed on 27 types of conduct that the company considers to be cause for disciplinary action and is included in the company's handbook.

It is the employer's position that in addition to the written requirement in the plant rules that employees obtain "authorization" to remove any property, the receiving department also requires employees to obtain a written authorization that is good for only one day from the receiving department supervisor before removing any property from company premises.

It is the employer's position that when the otherwise discarded pieces of wood and metal were observed near a receiving department door on November 25, a decision was made to let the items remain there to determine if the discarded items were going to be removed by an employee of the company. When security cameras showed the items were removed later that afternoon by Mr. Sloppy and a permission to remove items form had not been created for, or signed by the claimant, the employer considered the removal of the items to be theft and a decision was made to terminate Mr. Sloppy from his employment when he next was scheduled to report for work.

Prior to the incident in question the claimant had not received any disciplinary actions or warnings, although he had removed discarded property in the past with what he considered to be permissible authorization of his supervisor. It is undisputed that the items removed by Mr. Sloppy were of relative no monetary value and were being discarded by the company.

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 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.

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).

In discharge cases the employer has the burden of proof in establishing job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the 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. Iowa Department of Job Service*, 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."

In the case at hand the evidence is undisputed that the items removed from the company premises by the claimant on November 25, 2014 were discarded items of relatively no monetary value that the employer had planned on paying to have removed along with other discarded materials. The evidence also establishes that Mr. Sloppy had placed the items in clear view during the workday and that he had removed the items shortly after the end of his shift openly at a time when he could be easily seen by other employees and management and did not attempt to hide or secret his activities. These factors add credibility to the claimant's sworn testimony that he believed that he had received verbal permission to remove the discarded items and that the claimant did not believe that he was violating company policy by doing so. The manner in which the claimant removed the discarded company property adds credibility to his sworn testimony that he believed that he had verbal permission to remove the discarded property and was doing so in a manner that was consistent with past practices.

The claimant testified that when he had previously asked for written authorization from his supervisor he had been told that verbal authorization was sufficient. The administrative law judge also notes that the record does not establish that the claimant had been warned or counseled that he was not following company procedures in the past. For these reasons, the administrative law judge finds that the weight of evidence is established in favor of the claimant in this matter.

The question before the administrative law judge is not whether the employer had a right to discharge Mr. Sloppy for these reasons, but whether the discharge is disqualifying under the provisions of the Employment Security Law. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, for the above-stated reasons the administrative law judge concludes that the employer has not sustained its burden of proof in establishing intentional disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed providing the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated March 16, 2015, reference 01, is affirmed. The claimant was discharged from employment for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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