IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DAVID A WESTER
Claimant

BUTCH GRUELKE AUTO BODY INC
Employer

APPEAL NO. 07A-UI-07553-DWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/01/07 R: 02
Claimant: Appellant (1)

Section 96.5-2-a –Discharge

STATEMENT OF THE CASE:

David A. Wester (claimant) appealed a representative's August 1, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Butch Gruelke Auto Body, Inc. (employer) would not be charged because he had been discharged for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 28, 2007. The claimant participated in the hearing. Butch Gruelke, the owner, appeared on the employer's behalf. During the hearing, Employer Exhibits One through Three were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked more than 18 months for the employer. He worked as a full-time auto body technician. During his employment, the employer told the claimant and other employees they could not smoke in a customer's car, they had to keep the front parking lot clean, and the employer wanted employees to notify the front office when they left work early.

On April 5, 2007, the employer saw the claimant smoking in a customer's car. The claimant was busy and was not thinking when he went inside a customer's car with a cigarette. The employer gave the claimant a verbal warning for this incident. The claimant acknowledged that he deserved a warning for smoking in a customer's car. The claimant would have signed a warning notice if the employer would have asked him to on that day.

The employer decided to start documenting issues or warnings he gave to employees. The employer did not have any written policy about verbal or written warnings. The employer contacted his local Workforce office to find out how he should prepare written warnings. After

the claimant kicked a cigarette butt into the street on June 22, 2007, the employer decided he had to start issuing written warnings and finalized the form.

On June 28, the claimant told two co-workers he was leaving work early that day and would not return to work after lunch. Even though the employer wanted employees to tell the front office when they left early, this was the not the routine procedure followed at work. The claimant followed the usual procedure. On June 28 his co-workers forgot to tell management that the claimant left work early. When the employer tried to find the claimant, the co-worker then remembered to tell the employer that the claimant left work early.

The claimant reported to work as scheduled on June 29. At the end of the day, the employer presented the claimant with three written warnings. The first warning was for the April 5 incident. The employer marked it as a written warning. (Employer Exhibit One) The second warning was for the June 22 incident. (Employer Exhibit Two.) The employer gave the claimant the third warning because he failed to inform the employer he was leaving work early the day before. This warning indicated it was the final warning. (Employer Exhibit Three.)

The employer asked the claimant to sign each warning, but the claimant declined. The claimant refused to sign any of the warnings because he did not believe the warnings were fair and concluded the employer would use the signed warnings against him in the future. Prior to June 29, the employer did not inform the employees that written warnings were going to be used by the employer and what, if any, consequence a warning would have on the claimant's continued employment.

The employer wanted the claimant to sign the warnings to document warnings the employer gave employees. The employer told the claimant that if he did not sign the three warnings, he no longer had a job. The claimant declined to sign the warnings and packed up his property and left. The claimant did not return to work.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause, an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. The employer initiated the employment separation on June 29, 2007. For unemployment insurance purposes, the employer discharged the claimant.

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

In Green v Iowa Department of Job Service, 299 N.W.2d 651 (Iowa 1980), the Iowa Supreme Court ruled that failure to acknowledge the receipt of a written reprimand by signing it constitutes work-connected misconduct as a matter of law. The written warnings clearly gave the claimant an opportunity to write on the warning why he disagreed with the employer's description of the violations. The employer also warned the claimant that if he did not sign the warning, he would be discharged. The claimant's failure to sign the document amounts to a

willful act or omission constituting a material breach of his duties and obligation to the employer. Under the circumstances, the claimant's failure to sign the reprimand constitutes work-connected misconduct. As of July 1, 2007, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's August 1, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of July 1, 2007. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw