IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

AARON D FISHER Claimant **AMERICAN PACKAGING CORP** Employer	**APPEAL 19A-UI-02207-NM-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 02/10/19** **Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 4, 2019, (reference 01) unemployment insurance decision that denied benefits based on his discharge for insubordination. The parties were properly notified about the hearing. A telephone hearing was held on March 29, 2019. Claimant participated and testified. Employer participated through Human Resource Generalist Colin Hageman. Employer's Exhibits 1 through 10 were received into evidence.

ISSUE:

Was the claimant discharged for disqualifying, job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on February 28, 2010. Claimant last worked as a full-time shipping/receiving worker. Claimant was separated from employment on February 15, 2019, when he was discharged.

Over the last year of claimant's employment, he was spoken to about his job performance on at least six occasions. The conversations generally revolved around claimant's ability to complete his work in a timely and efficient manner. (Exhibits 2 through 9). However, there were also complaints made to management that claimant would refuse to do work. (Exhibit 8). All of the conversations with claimant were verbal disciplinary action and he was never advised that his job may be in jeopardy if things did not improve.

On February 13, 2019, claimant was asked over the radio to assist with materials in an area outside of his own. Claimant responded that he was very busy and it might be a while. A disagreement ensued over the radio. Supervisors Mike Campbell and Nate Warwick went to find claimant to speak to him about the situation. When they found claimant he was parked, talking with another employee. Claimant testified he had just completed a task and was having a brief conversation before moving on to the next task. Campbell then asked claimant why he

could not help in the other area. Claimant explained it was because he was busy stocking materials in his own assigned areas. Campbell then took claimant around and showed him piles of materials that were already stocked in his areas and noted it should be enough for three to four hours' worth of work. Claimant testified there were materials stocked, but they were not the materials that were being used at the time of the conversation. Claimant further testified that while he and Campbell were discussing the situation a line-worker came out and indicated they needed more material. Hageman was not able to confirm or deny this testimony, but agreed that, if true, it would have been appropriate for claimant to prioritize his own work area over the area needing additional assistance. At no point during the conversation did Campbell advise claimant his job was in jeopardy. Two days later, on February 15, claimant was discharged for insubordination in connection with the February 13 incident.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes 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.

871 IAC 24.32(1)a provides:

> Discharge for misconduct.
>
> (1) Definition.
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> 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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Claimant was discharged for insubordination after he failed to assist with materials in an area outside of his own. The court in *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982) held that an employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. Claimant provided unrefuted testimony that he was not able to help with the other materials because he was too busy supplying materials in his own assigned areas. His behavior was certainly in the best interests of the Employer who seeks to profit from the least interruptions to service possible. Alleged insubordination is evaluated by the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. *See Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985). Good faith under this standard is not determined by the Petitioner's subjective understanding. Good faith is measured by an objective standard of reasonableness. "The key question is what a reasonable person would have believed under the circumstances." *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330, 337 (Iowa 1988); accord *O'Brien v. EAB*, 494 N.W.2d 660 (Iowa 1993) (objective good faith is test in quits for good cause).

Claimant's refusal to interrupt his own work to assist in another area was done in good faith. Even though the employer argues the claimant failed to complete a given task at hand, there is nothing in the record to establish such failure caused significant harm to the employer. To the contrary, Hageman testified if claimant did have work to do in his own area that it would have been appropriate for him not to provide assistance when requested. As such, the employer has failed to meet its burden.

Even if claimant did inappropriately refuse a request for assistance, an employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Inasmuch as employer had not previously warned claimant about the potential for separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning.

DECISION:

The March 4, 2019, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Nicole Merrill
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs