IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

WILLIAM C FREY
Claimant

NORTHERN POWER STYSTEMS CO
NORTHSTAR POWER CO
Employer

APPEAL NO. 06A-UI-11617-H2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11-05-06 R: 02
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 1, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 19, 2006. The claimant did participate along with his witness, Larry Hockensmith. The employer did participate through (representative) Becky Leer, Controller; Frank Christensen, General Manager; and Steve Martley, Parts Manager. Employer's Exhibit One was received.

ISSUE:

Was the claimant discharged for work related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a distributor in the parts department full time beginning April 17, 2006 through November 10, 2006, when he was discharged.

On November 10 the claimant left the premises during his break period to take a lock over to his wife at their storage unit. The claimant did not take his break at his normal time of 2:00 p.m., but instead went at 2:30 pm. or 2:35 p.m. Prior to leaving the building, the claimant did not notify any management official that he was leaving the premises. Employees often leave the premises during their 15-minute allotted break to go to the nearby store to purchase food and drink. Mr. Martely made it clear during the hearing that employees were not required to notify anyone they were leaving the premises for their 15-minute break period. Mr. Martley began looking for the claimant at about 2:30 p.m. and was unable to locate him until approximately 20 or 30 minutes later. When he found the claimant, he asked him where he had been. The claimant told Mr. Martely that he had used his break period to take a lock over to his wife at their storage locker. The storage facility is two buildings behind the employer's place of business.

Employees usually take their breaks at 10:00 a.m. and at 2:00 p.m. although that schedule can change if there is a truck to be unloaded. The employer expects the employees to

accommodate moving their break times to facilitate unloading of trucks. Nothing in the employer's handbook requires that employees gain permission to move their break time.

The claimant had prior discipline for not being where he was supposed to be in the plant when he was supposed to be there. On October 13, as a condition of his discipline and return to work the claimant agreed to twelve working conditions outlined in Employer's Exhibit One. The claimant agreed that his breaks would not extend past fifteen minutes. None of the working conditions or the rules of the company handbook require the claimant to get permission before leaving the premises on his break, or prohibit him from moving his break time. The claimant denied that he was gone any longer than his 15-minute break.

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.

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). The employer discharged the claimant and has the burden of proof to show misconduct. Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the

carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988).

Under both the conditions of continuing employment and the employer's own handbook, the claimant was not required to obtain permission to either change his break time or to leave the premises. The claimant alleges he was gone less than 15 minutes from when he began his break at 2:35 p.m. The employer has not established when the claimant returned to the workplace, as Mr. Martley clearly indicated he did not see the claimant return to his workplace but only noticed he had returned after a few minutes. The employer has not established the claimant took a break any longer than 15 minutes. The employer has not established that the claimant was prohibited from leaving the premises without telling anyone or that he was prohibited from changing his break time. Under these circumstances, misconduct has not been established. There was no wanton or willful disregard of the employer's standards. In short, substantial misconduct has not been established by the evidence. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). Inasmuch as the employer has not established a current or final act of misconduct, benefits are allowed.

DECISION:

The December 1, 2006, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Teresa K. Hillary
Administrative Law Judge

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Decision Dated and Mailed

tkh/kjw