IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JASON W MATHENY
Claimant

CWP WEST CORPORATION
WASHPOINTE CAR WASHES
Employer

APPEAL NO. 09A-UI-03285-S2T

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 01/25/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jason Matheny (claimant) appealed a representative's February 20, 2009 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Washpointe Car Washes (employer) for failure to follow instructions in the performance of his job. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 25, 2009. The claimant participated personally. The employer participated by John Hayes, Human Resources/Safety Director, and Joe Matheny, Area Manager. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired in mid-September 2004 as a full-time manager. The claimant signed for receipt of the employer's handbook when he was hired. The handbook contains a progressive disciplinary policy. The area manager, who was the claimant's brother, told the claimant he would distance himself from the claimant's work but did not succeed. There was a supervisor over the claimant. That supervisor reported to the area manager.

On or about October 15, 2008, the claimant called in sick an hour before the start of his shift. The area manager thought the claimant should have called in the night before even though that policy is not written anywhere. The area manager issued the claimant a three day suspension for calling in sick on the day he was sick.

On January 24, 2009, the claimant was managing a short staffed crew on a busy day. The claimant asked the area manager if he could close one hour early. The crew had only a 30-minute break during their eight hour work day. The area manager told the claimant that even

though the work place was so busy that the claimant did not have time to call in other workers, he could not close early. The area manager did nothing to help the claimant get additional workers. The claimant closed the operation at 5:00 p.m. instead of staying open until 6:00 p.m.

On January 26, 2009, the claimant's supervisor discussed the claimant's closing of the business early on January 24, 2009. The claimant understood he did not follow the area manager's orders. The supervisor told the claimant he would not be terminated for closing early on January 26, 2009. The area manager then got on the telephone with the claimant and the supervisor. Prior to the telephone conversation, the area manager told the supervisor that he would not fire the claimant for closing early. The area manager started asking the claimant questions about why he works for the company. The area manager did not like the claimant's answers to the questions. The area manager told the claimant he was terminated for closing the business early on January 24, 2009.

At the hearing, the area manager admitted that prior to the telephone conversation he was not going to terminate the claimant for closing early but changed his mind.

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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). 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. In this case, the employer was not certain of the company's policies. It could not prove that the claimant was notified in writing of any of the company's policies. The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's February 20, 2009 decision (reference 01) is reversed. The employer has not met its burden of 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/kjw