IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DAVID H MITCHELL
Claimant

C H M I
Employer

APPEAL NO. 08A-UI-00551-H2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12-23-07 R: 04
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 15, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on January 31, 2008. The claimant did participate. The employer did not participate.

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 polisher full time beginning January 25, 1999 through December 28, 2007 when he was discharged.

The claimant went to plant manager Jaime Gonzales to complain about not receiving an evaluation and a raise in pay. Mr. Gonzales told the claimant that he had been given a pay raise on his last pay check. The claimant checked his paycheck stub and discovered that he had been given a $0.25 per hour raise. The claimant went back to Mr. Gonzales to complain about the size of his raise and the two of them began to argue. Both used profanity when speaking to each other and it was not uncommon for profanity to be used by the individuals working in the plant, including supervisors. The claimant had previously argued with supervisors including Mr. Gonzales.

When the claimant continued to argue with Mr. Gonzales about the size of his raise he was sent home. The claimant returned to work the following day and was discharged for arguing with Mr. Gonzales about the size of his pay raise.

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 § 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 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. 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. IDJS*, 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." 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).

Balky or argumentative conduct is not necessarily disqualifying. The claimant was unhappy about the size of his pay raise and was arguing with the plant manager. The evidence does not establish that the claimant deliberately and intentionally acted in a manner he knew to be contrary to the employer's interests or standards. Arguing with the employer was allowed on the premises and had occurred previously. There was no wanton or willful disregard of the employer's standards. There is no evidence that the claimant had ever been warned about arguing or disciplined for arguing in the past. In short, substantial misconduct has not been established by the evidence. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The January 15, 2008, reference 01, decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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Teresa K. Hillary
Administrative Law Judge

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Decision Dated and Mailed

tkh/css