IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DREW E HOPKINS
Claimant

MCKEE AUTO CENTER INC
Employer

APPEAL NO: 13A-UI-09999-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/21/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Drew E. Hopkins (claimant) appealed a representative's August 21, 2013 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with McKee Auto Center, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 10, 2013. The claimant participated in the hearing. Rick Konradi appeared on the employer's behalf and presented testimony from three other witnesses, Matt Wetzel, Jacqueline Kinney, and John Haakma. 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:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on August 13, 2013. He worked full time as parts manager. His last day of work was July 23, 2013. The employer discharged him on that date. The reason asserted for the discharge was an issue regarding a part not being ordered after a prior warning for attendance.

The claimant had been a no-call/no-show for work on July 19. As a result, on July 22 he was given a written warning for attendance, including prior tardiness. After 5:00 p.m. on July 22 an RV technician, Wetzel, approached the claimant about possibly ordering a part for an RV for a customer who was passing through town that night on RAGBRAI. The claimant told Wetzel that as long as the part was ordered by 5:30 p.m. it should be able to be delivered to the shop by 8:00 a.m. the next morning. When Wetzel left the claimant's office, the claimant believed it was to confirm with the customer that the customer wished to have the part ordered and would get

back to him; Wetzel left believing that the claimant understood that the customer did wish to have the part ordered. As the claimant was unclear as to the decision made by the customer, the part did not get ordered by 5:30 p.m. Therefore, the part was not delivered by 8:00 a.m. on July 23, causing the customer to be very unhappy. As a result of this incident after the warning for his attendance, the business owner determined to discharge the claimant.

There had been some prior concern about the claimant's proper processing of parts orders, and about the prior week a system had been set up to try to assist the claimant in better tracking when parts were ordered and when they were received. However, the claimant had never been given any kind of written warning regarding his handling of the parts ordering, nor did it appear that the issue with the part which was not ordered on July 22 occurred because the claimant had failed to properly use the system which had been set up for him.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, 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 is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The gravity of the incident and the number of prior violations or prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

The reason cited by the employer for discharging the claimant is his failure to order the part on the late afternoon of July 22 after being given a written warning for attendance on that date. The failure to order the part was not related to the attendance warning nor was it a further attendance violation. He had not been given any formal warnings for ordering issues, nor does it appear that the ordering issue in this case was due to the types of issues that may have occurred in the past. Rather, the claimant's failure to realize that the customer was committing

to order the part so that it could be ordered by 5:30 p.m. was the result of miscommunication, at worst through inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence, and was a good faith error in judgment or discretion. While the employer may have had a good business reason for discharging the claimant, it has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's August 21, 2013 decision (reference 02) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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