IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ZACHARY T VEACH
Claimant

SEARS ROEBUCK & COMPANY
Employer

APPEAL NO. 14A-UI-03932-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/02/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Sears Roebuck & Company (employer) appealed a representative's April 2, 2014, decision (reference 02) that concluded Zachary Veach (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 1, 2014. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Larry Eurich, District Service Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on December 15, 2011, as a full-time in home service technician. The claimant received the employer's on-line handbook. In February 2013, the employer placed the claimant on a six-month performance improvement plan.

On November 5, 2013, the claimant inaccurately reflected his work activity on his time report. He reported he started his day at 7:35 a.m. but actually started at 8:47 a.m. He reported he went to his first call at 9:20 a.m. but actually arrived at 9:24 a.m. On November 6, 2013, the claimant documented he worked from 7:57 a.m. to 1:00 p.m. but he never left home. The district service manager discovered the discrepancy on November 15, 2013.

On November 22, 2013, the employer issued the claimant a written warning for failure to follow instructions. The employer did not notify the claimant that further infractions could result in termination from employment. The district service manager visited with the claimant about the November 5 and 6, 2013, discrepancies.

On November 25, 2013, the district service manager notified the employer of the November 5 and 6, 2013, discrepancies. On December 18, 2013, the employer suspended the claimant so it

could investigate the discrepancies. The employer terminated the claimant on January 3, 2014, for falsification of time and service orders.

The claimant filed for unemployment insurance benefits with an effective date of March 2, 2014. He received no unemployment insurance benefits after the separation from employment. The employer did not participate in the fact-finding interview on April 1, 2014.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r.871-24.32(8) provides:

> (8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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 must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident provided by the employer was discovered on November 15. The claimant was not suspended until December 18, 2013. The employer issued the claimant a written warning after it knew about the falsification but did not suspend the claimant. It chose to continue the claimant's employment for another month. The employer has failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed.

DECISION:

The representative's April 2, 2014, decision (reference 02) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

_____
Beth A. Scheetz
Administrative Law Judge

_____
Decision Dated and Mailed

bas/css