IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

PHAIROT L HOANG
Claimant

THE MAYTAG COMPANY
Employer

APPEAL NO. 09A-UI-10045-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/21/08
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Phairot Hoang (claimant) appealed a representative's June 29, 2009 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with The Maytag Company (employer) for sleeping on the job. The claimant was represented by Sara Laughlin, Attorney at Law, and participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The claimant's wife, Phonsamay Hoang, observed the hearing. The claimant 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 considered all of the evidence in the record, finds that: The claimant was hired on November 22, 1991, as a full-time automatic foam operator. The claimant received the union contract. Five or six years ago the claimant played a joke on a claimant. The employer originally accused the claimant of sleeping on the job but later changed the discipline to an offense involving horseplay. The claimant was demoted. This was the only discipline the employer issued the claimant.

On May 18, 2009, the claimant felt dizzy and grabbed for a chair. The next thing the claimant remembered was a co-worker finding him. The employer suspended the claimant for two days for sleeping on the job even though the claimant told the employer he did not feel well. On May 18, 2009, the claimant visited his doctor. The doctor wrote a note indicating the claimant fainted. The claimant provided the note to the employer on May 20, 2009, when he returned to work. The employer refused to look at the note and terminated the claimant.

The claimant notified the doctor of the problem. The doctor wrote a note on May 26, 2009, indicating the claimant had medical issues relating to high cholesterol, blood sugar and blood pressure. The claimant provided the letter to the employer immediately but the employer said the letter was too late.

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). The employer did not participate in the hearing and, therefore, provided no evidence of job-related misconduct. The employer terminated the claimant for a medical issue he could not have controlled. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's June 29, 2009 decision (reference 01) is reversed. The employer has not met its 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/css