IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

THOMAS KNOTT
Claimant

WASHINGTON PIZZA HUT INC
Employer

APPEAL NO: 12A-UI-06415-ET

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05-06-12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 25, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 25, 2012. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time delivery driver for Washington Pizza Hut from October 4, 2004 to May 9, 2012. On a Friday night in December 2011 or January 2012 the claimant exited the building on his way to a delivery and the assistant manager and her fiancé were outside and as the assistant manager entered her vehicle she said there was pizza sauce all over the outside of her car. Earlier in the evening the claimant had asked the assistant manager a question and she "blew up" at him. After she discovered the sauce on her car her fiancé stated to the claimant that he heard he had "lipped off" to his fiancée and if he found out the claimant put the sauce on her car there would be problems. The claimant stated he had been inside working or out on deliveries and he did not do it. The assistant manager's fiancé then charged the claimant and shoved him and the claimant shoved him back in self defense. The fiancé then grabbed the claimant around the neck and tackled him. They both went to the ground and the claimant hit his head on the concrete. The claimant decided not to report the incident to the police. The assistant manager seemed to believe the claimant was responsible for the sauce incident and treated him poorly after that. Whenever he would ask her a question she would "blow up" loudly and have a "temper tantrum." Before the incident in December 2011/January 2012, the claimant received a written warning after a customer, who always complained about her orders, said she never wanted the claimant to deliver to her again. The claimant had taken the order and read it back to the customer three times to insure it was correct but she still called and complained that there was something wrong with her order and

the claimant was written up as a result. In March or April 2012 the claimant made a delivery to a customer and he used the change he gave him as the claimant's tip. The pizza was late so the employer took $5.00 off the cost of the food and the customer stated he wanted his change back. The customer complained and the claimant received a second written warning. On May 6, 2012, the claimant told the assistant manager he had made five deliveries in his own vehicle. When the drivers made deliveries in their own cars they received one-half of the delivery fee charged by the employer, which was $2.50 per delivery, so the claimant should have received $6.25. She opened the register but before she paid him some customers entered the store and the assistant manager left to help the customers without finishing the transaction with the claimant. Later the claimant asked the assistant manager why she did not pay him when she had the register open and she "blew up" at him in front of customers and co-workers. The claimant reported for work May 9, 2012, and the assistant manager and shift manager sat with him, gave him his third written warning, and notified him that his employment was terminated because he threw a "temper tantrum" about being paid his delivery fee.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant does not rise to the level of job misconduct as that term is defined by Iowa law. The employer has not met its burden of proof. Therefore, work connected misconduct has not been established and benefits are allowed.

DECISION:

The May 25, 2012, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder
Administrative Law Judge

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Decision Dated and Mailed

je/pjs