IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DARRIUS FLOWERS
Claimant

DOHERTY STAFFING SOLUTIONS
Employer

APPEAL NO: 16A-UI-08433-JE-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/03/16
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 3, 2016, 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 August 22, 2016. The claimant participated in the hearing with former food production workers Jermain McClung and Britney Kingery. Erica Simmer, Onsite Manager and Glenda Niemec, Unemployment Insurance Administrator, participated in the hearing on behalf of the employer.

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 full-time food production worker for Doherty Staffing Solutions last assigned to Cargill from January 12, 2016 to June 30, 2016. He was discharged after being accused of damaging the food product he was working on.

The claimant was on the frittata line and his job was to turn the frittatas right side up as they came out of the oven. Around June 27, 2016, a supervisor notified the employer some product was damaged. The employer pulled the schedule of every employee who worked in that department and spoke to all of them. The first employee she met with was Food Production Worker Jermain McClung and then she met with the claimant. Both denied damaging any product or any knowledge of anyone else doing so. The employer then met with Food Production Worker Britney Kingery and she also denied damaging product, seeing anything or having any knowledge of how it happened. The employer next met with Food Production Worker "DD" and he stated sometimes people "might play around" but said he could not remember who. The employer said that type of conduct would not be tolerated and DD still said he could not remember who might have "played around." The employer then met with Food Production Worker "CK" and he indicated he was not in the room that day. The employer asked if he ever saw anything and he said he had not. Later CK went back to the employer and stated he saw Ms. Kingery learning against the j-belt and poke a hole in the product. The employer met with Ms. Kingery again and told her that her name had been mentioned in connection with

the investigation and asked if she wanted to give her side. Ms. Kingery admitted playing around sometimes and said employees would sometimes poke holes in the product to "see if the (employees) further down the line were paying attention." The employer told her that was destruction of the employer's property and asked Ms. Kingery why she thought it was okay. Ms. Kingery stated the last employee before the product went in the freezer should have caught the damaged product. The employer asked Ms. Kingery if anyone else did the same thing and she stated Mr. McClung and the claimant did so. Ms. Kingery said they were the only three employees to damage product intentionally. Ms. Kingery testified that on the day of the incident in question she did not see the claimant intentionally damage any product but also said she had seen him poke holes in the product. The employer then talked to "MD" and he said the three previously mentioned employees in addition to DD poked holes in the product when they wanted to "mess with (him) because he was the last employee to prevent bad product from going through to the freezer. MD stated on the day in question he became angry and let the product go through to the freezer. The employer issued MD a written warning and told him he could no longer work in that area of the plant anymore.

Approximately one to one and one-half weeks prior to the final incident the employer spoke to all employees in that department because a large selection of product was returned to the plant and had to be redone as some of the frittatas were dented, too brown, not the correct shape, or did not look right. The employer did not have any proof that the problems with the product occurred intentionally but told all employees damaging product would not be tolerated.

The employer spoke to her supervisor and human resources after the final incident and after doing so notified the claimant his employment was terminated June 30, 2016. The claimant had not received any previous verbal or written warnings for anything other than attendance in the past.

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 § 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).

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).

In this case, the claimant and Mr. McClung both deny that the claimant damaged product around June 27, 2016. Ms. Kingery's testimony was inconsistent and unpersuasive. Food production worker CK first stated he was not in the room the day in question and later returned to the employer and said he saw Ms. Kingery poke holes in the product but did not accuse the claimant of doing so. Food production worker MD said the claimant, Mr. McClung, Ms. Kingery, and DD would poke holes in the product to "mess with (him)" but the evidence does not establish the claimant damaged product around June 27, 2016, and no time frame for the claimant damaging product was given. Nor is it clear if MD ever actually saw the claimant poke holes in the product or if he simply associated him as part of the group of other employees who "messed with (him)."

The claimant had not received any previous warnings for his performance and the employer's evidence does not establish the claimant was responsible for damaging product around June 27, 2016. Under these circumstances, the administrative law judge must conclude the employer has not met its burden of proving the claimant damaged product. Therefore, benefits must be allowed.

DECISION:

The August 3, 2016, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

_____
Julie Elder
Administrative Law Judge

_____
Decision Dated and Mailed

je/pjs