IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

LEON K KOUAME
Claimant

POLARIS INDUSTRIES INC
Employer

APPEAL NO. 17A-UI-11941-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/01/17
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Leon Kouame (claimant) appealed a representative's November 13, 2017, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Polaris Industries (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 12, 2017. The claimant participated personally. The employer sent the Appeals Bureau a letter stating it would not participate in the hearing.

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 in June 2014, as a full-time finesse. The claimant signed for receipt of the employer's handbook. The employer did not issue the claimant any warnings during his employment.

French is the claimant's first language. He is from the Ivory Coast. At work he was talking with a co-worker, Michael, whose first language is English. The two talked about how they should learn Spanish. Michael said he used to work for a construction company and the supervisor at the end of break said, "Andale, Andale, Arriba" to hurry the employees back to work. The claimant said they should practice their Spanish. Every day the two said the phrase to each other after break.

On October 16, 2017, the two were far apart. The claimant raised his voice and said the phrase so Michael could hear. A female co-worker told the claimant she did not like what he said. He asked her why. She did not answer him. The employer sent the claimant home and investigated the incident. On October 23, 2017, the employer terminated the claimant for using the phrase. The claimant still does not know what he said that was wrong or why he was fired.

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, regardless of the source of the individual's wage credits:
>
> 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 disqualification shall continue 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 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 claimant had no wrongful intent because he does not appear to know the context from which the words are derived. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's November 13, 2017, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs