IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

CHANEL C STINSON Claimant **MASTERBRAND CABINETS INC** Employer	**APPEAL 16A-UI-10892-JP-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 12/20/15** **Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 28, 2016, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 20, 2016. Claimant participated. Employer participated through human resources representative Amy Mosley and supervisor Dan Corrigan.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a woodworker from August 23, 2012, and was separated from employment on September 13, 2016, when she was discharged.

The employer has an attendance policy which applies point values to attendance infractions. The policy also provides that an employee will be warned as points are accumulated, and will be discharged upon receiving eight points or three written warnings in a rolling twelve month period. The employer also has a progressive disciplinary policy that starts with a coaching, then a written warning, then a second written warning, and then discharge. Claimant was aware of the employer's policies.

From April 11, 2016 to September 8, 2016, claimant and other employees would leave work early without asking for permission once their work was done. The company had a written policy in place that employees needed permission to leave early, but it was not enforced during this time period. Claimant and the other employees were not disciplined between April 11, 2016 and September 8, 2016 for leaving work early without permission. On September 8, 2016, Mr. Corrigan got the team together, including claimant, and verbally explained the new expectation that employees were going to start working as a team and cross training into other areas to more consistently divide the work up. Some associates had been working four hours while others worked ten or more hours. Mr. Corrigan did not tell claimant she had to have permission to leave early, because the company has a written policy that if an employee is

going to leave early they need to have permission to leave early. The employer did not put the expectations in writing.

On September 9, 2016, claimant was working her scheduled shift with a coworker. Claimant started her shift at 6:00 a.m. At approximately 9:15 a.m. claimant and her coworker finished their specific job. The coworker that claimant was working with then left at 9:15 a.m. Claimant stayed at the employer and helped other employees until 11:05 a.m. The employee that claimant was helping stated that they were almost done, so claimant told that employee that she was leaving. The employee was just a coworker, not a team lead and not a supervisor. At 11:05 a.m., claimant left work early without telling her supervisor or team lead. Claimant's supervisor and team lead were both present. None of the other employees left at 11:05 a.m. Claimant's lunch starts at 11:15 a.m. and she has thirty minutes for lunch. The employer discovered claimant had left when she did not return from lunch at 11:45 a.m.

Claimant's next scheduled work day was Monday, September 12, 2016. On September 12, 2016, Mr. Corrigan met with claimant about what happened on September 9, 2016. Mr. Corrigan asked claimant why she did not stay and help them finish. Claimant stated that she did stay and help and that her coworker left at 9:15 a.m. so she thought it was ok to leave early. Mr. Corrigan stated he wanted them to work together and help out.

On September 13, 2016, Ms. Mosley and Mr. Corrigan met with claimant. The employer informed claimant that she did not finish her job and she left the premises and did not have permission to leave. The employer told claimant she was suspended and the employer would follow up with her later that day. The employer then interviewed every team member that was at the September 8, 2016 meeting about what was discussed at the September 8, 2016 meeting. The team members agreed that they were to stay and work as a team. The employer determined that claimant had an unauthorized departure on September 9, 2016. The employee handbook states that an unauthorized departure may result in discharge. Other employees have had unauthorized departures and were discharged. Later on September 13, 2016, Ms. Mosley called claimant and told her she was discharged. The coworker that left at 9:15 a.m. was also discharged.

Claimant had written warnings for absenteeism on February 2, 2016 and March 14, 2016.

REASONING AND CONCLUSIONS OF LAW:

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

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:
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> 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.
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> 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(4) provides:

> (4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). 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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.,* 391 N.W.2d 731 (Iowa Ct. App. 1986).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to

whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Claimant was discharged for having an unauthorized departure from work on September 9, 2016 when she left work early without permission from her supervisor or team lead. From April 11, 2016 until September 8, 2016, the employer allowed employees to leave work without permission once their work was completed. The employees were not disciplined during this time period for leaving work without permission despite a policy that required employees to receive permission prior to leaving work early. Even though the employer met with the team, including claimant, on September 8, 2016 regarding a new expectation that employees do not leave early without permission, it did not put this new expectation in writing.

An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. The conduct for which claimant was discharged was merely an isolated incident of poor judgment and inasmuch as employer had not previously warned claimant about the issue leading to the separation (unauthorized departures), it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed.

DECISION:

The September 28, 2016, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Jeremy Peterson
Administrative Law Judge

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Decision Dated and Mailed

jp/pjs