IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JAMES WISSING
Claimant

MISSISSIPPI VALLEY
Employer

APPEAL NO: 12A-UI-03400-BT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/25/11
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

James Wissing (claimant) appealed an unemployment insurance decision dated April 2, 2012, reference 02, which held that he was not eligible for unemployment insurance benefits because he was discharged from Mississippi Valley (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 18, 2012. The claimant participated in the hearing. The employer participated through Roxanne Schmitz, Assistant General Manager and Janet Budden, Accountant. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

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 employed as a full-time laborer/wood fab operator from March 1, 2011 through February 16, 2012 when he was discharged for insubordination. The employer manufactures wood fence posts and the claimant's work hours were from 8:00 a.m. to 4:30 p.m. When the claimant reported to work that day, he went to the office of Assistant General Manager Roxanne Schmitz and asked if he could get off work a half hour early that day or the next day, as long as it was before Tuesday, February 21, 2012. He has conservatorship over his brother and needed to go to the Social Security office. Ms. Schmitz told him it would not work that day or the next but she could schedule it for Tuesday and the claimant agreed that should work. Ms. Schmitz told the claimant that they were far behind on production and that was why she had asked him to stop talking and increase his production. She said that when Tim, a former employee, was there working, he doubled and sometimes even tripled the amount of production that the claimant's building was now producing each day.

The claimant had twice been told not to take his break at 9:00 a.m. after starting his shift at 8:00 a.m. Ms. Schmitz was in the work area around 9:00 a.m. later that same day when she

noticed the claimant heading to break so she asked him about it and he admitted he was going on break. Ms. Schmitz reminded him that he just arrived at 8:00 a.m. and should not be going on break. The claimant responded by stating the guys told him that it does not matter, that it all came out in the wash. Ms. Schmitz advised him that he was told a long time ago not to take a break an hour after he got to work.

The claimant said "okay fine" and started heading back to the wood fab building when he stopped and turned around towards Ms. Schmitz. He aggressively shook his finger at her and said, "You listen here. You just remember that we're under contract here. And I do not like the comment that you made when I was leaving the office about Tim's production. You tell me where's Tim at now? Tim's not here!" Ms. Schmitz told the claimant that he could just consider that his last day.

The employer issued the claimant a verbal warning on October 11, 2011 about talking and not working. He was counseled again on December 8, 2011 about talking and a lack of production. The employer also told him not to take directions from other associates within the production area. The claimant received a written warning on February 7, 2012 regarding his talking and poor efficiency. He had taken a break and was in another work area talking to another associate for an additional ten minutes. They were not discussing work issues but were talking about something personal. The claimant signed the written warning.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on February 16, 2012 for insubordination. He had received several previous disciplinary warnings for talking and not producing. The claimant's insubordination shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated April 2, 2012, reference 02, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Susan D. Ackerman
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs