IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

PHUONG T NGUYEN
Claimant

WEST LIBERTY FOODS
Employer

APPEAL NO. 08A-UI-07652-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/13/08 R: 04
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Phuong Nguyen (claimant) appealed a representative's August 22, 2008 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with West Liberty Foods (employer) for fighting on the job. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 18, 2008. The claimant participated personally through interpreter Lena Hoang. The employer participated by Heather Gardner, Human Resources Generalist.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

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 on September 23, 1996, as a full-time packager. Her primary language is Vietnamese. The claimant signed for receipt of the employer's handbook in English on April 22, 2004. The handbook prohibited horseplay at work. The employer did not issue the claimant any warnings during her employment.

On July 7, 2008, the claimant and a co-worker accidentally softly bumped shoulders in the hallway at work. The co-worker turned around and softly pushed the claimant. The claimant responded with the same. The claimant thought the co-worker was playing a game with her. Later the co-worker told the employer the claimant pushed her. The employer terminated the claimant on July 11, 2008.

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:
>
> 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 proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An incident of horseplay may constitute job disqualifying misconduct where there has been a previous record of discipline and warnings. Pfeiler v. Employment Appeal Board, 455 N.W.2d 307 (Iowa App. 1990). 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 provided one incident of minor horseplay at work that was initiated by a co-worker. The employer, therefore, provided insufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's August 22, 2008 decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs