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

RANDAL L SEIBERLING
Claimant

APPEAL NO. 13A-UI-10631-H2

ADMINISTRATIVE LAW JUDGE
DECISION

BRUEGGER'S ENTERPRISES INC
Employer

OC: 08/25/13
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge/Misconduct
Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 16, 2013, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued an in-person hearing was held on October 22, 2013 in Des Moines, Iowa. Claimant participated. The employer did participate through Rick Bunge, District Manager via telephone conference call.

ISSUE:

Did the claimant voluntarily quit his employment without good cause attributable to the employer or was he discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an assistant manager beginning on May 23, 2012 through August 27, 2013 when voluntarily quit prior to his discharge. The claimant was going to be discharged by Mr. Bunge for failure to meet performance standards if he had not quit. The claimant as the assistant manager had no authority to force the manager, Mathew Riordin, into following corporate policy and procedure. Mr. Riordin consistently failed to assist the claimant in following company procedures in order to bring the store into compliance with corporate guidelines. While both the claimant and the manager were working on performance action improvement plans, the claimant was expected to meet his by the end of August while the manager still has not been expected to meet the standards expected of the claimant. Since the manager controlled the workplace more than the claimant could and since the claimant asked the district manager Mr. Bunge to assist him but was not given assistance needed to meet the expected results, there has been no intentional misconduct on the part of the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes 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.

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). 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

The employer had already determined to discharge the claimant for failing to meet performance expectations when the claimant quit working. Under these circumstances the claimant's separation is properly characterized as a discharge. The employer did not establish intentional substantial misconduct. The employer made the claimant as the assistant manager responsible for achieving results that could only be accomplished with the assistance and cooperation of the store manager. The store manager did not assist the claimant and failed to follow corporate policies that Mr. Bunge expected. Instead of holding Mr. Riordin responsible, Mr. Bunge held the claimant responsible for a manager he had no authority to control. Under these circumstances the administrative law judge concludes that the employer discharged the claimant for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The September 16, 2013, (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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Teresa K. Hillary
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs