IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JON Q LE
Claimant

BRIDGESTONE RETAIL OPERATIONS LLC
Employer

APPEAL NO. 17A-UI-04532-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/09/17
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jon Le (claimant) appealed a representative's April 26, 2017, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Bridgestone Retail Operations (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 18, 2017. The claimant was represented by Stuart Higgins, Attorney at Law, and participated personally. Jacob Hadaway, a former co-worker, and Meagan Raborn, the claimant's girlfriend, testified for the claimant. The employer participated by Andy Smith, Store Manager.

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 on September 16, 2015, as a full-time technician. The employer has a handbook but the claimant does not recall receiving a copy. The handbook has a policy that "prohibits teammates from using their cellphones to photograph or video record other persons in the workplace, including fellow teammates, other customers, and vendors".
In approximately 2016, the claimant's girlfriend posted a positive review on Google after having her car serviced by the employer. In approximately March 2017, the claimant reduced her on-line rating after she was dissatisfied with the employer's service. Friends of hers also posted comments. The claimant became aware of the comments on or about April 4, 2017. The employer approached the claimant on April 4, 2017, and accused him of making the comments. The claimant denied making the comments but understood his girlfriend made them because her name was on the comments. The claimant's girlfriend took immediate action to remove the comments.

On or about April 6, 2017, the employer had a meeting with the claimant. The claimant asked if he could record the meeting. The employer denied his request. The claimant did not record

and offered to show the employer his phone. On April 6, 2016, the employer terminated the claimant for recording at work on unknown dates and making comments on Google.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

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 provide any evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's April 26, 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/scn