IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

STEPHEN K BIRD Claimant **EAGLE WINDOW & DOOR MANUFACTURING** Employer	**APPEAL 18A-UI-09419-H2** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 02/04/18** **Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 5, 2018, (reference 02) that denied benefits. The parties were properly notified about the hearing. An in person hearing was held on November 8, 2018 in Dubuque, Iowa. Claimant participated. Employer did not participate. The employer did not respond to the subpoena for documents served on them October 16, 2018. Claimant's Exhibit A was admitted into the record.

ISSUE:

Was the claimant discharged due to job connected misconduct sufficient to disqualify him from receipt of unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as material handler and pre-finisher beginning on November 16, 2012 through August 15, 2018, when he was discharged.

The claimant was told he was being discharged for using profanity and for treating a coworker in a disrespectful manner during an incident that occurred on August 10 between him and lead worker Tessa. It is common on the plant floor for both line workers and management employees to use profanity. The claimant and Tessa were discussing an issue and the claimant made the comment that it was "fricking (sic) bullshit that you guys keep treating me this way." Tessa used profanity when speaking to the claimant, when she said to the claimant "you do as I fucking tell you or you and I are going to have a problem." The claimant did not treat Tessa any differently than she treated him during the discussion. Tessa used more profanity than the claimant did and she actually threatened the claimant. The use of profanity on the production floor was common and was done by managers on a frequent basis.

Claimant had no prior warnings for any type of similar conduct or behavior. Claimant had been written up for use of unplanned paid-time-off and for punching in too early. He was warned about falling asleep during a meeting in a very warm room where other employees also fell

asleep. Only the claimant was warned about nodding off, even though other employees engaged in the same behavior.

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 section 96.5(2)a provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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 disqualification shall continue 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 evidence presented at the hearing does not establish that the claimant violated the employer's rules or regulations. The claimant was threatened by Tessa and she used substantially more serious profanity when speaking to him than he did to her. There is no evidence that Tessa was disciplined. The employer treated the claimant differently than other employees. Several supervisors told the claimant on an almost daily basis that no one at the plant liked him and that he should quit his job. The claimant was singled out for treatment different from other employees because a number of supervisors simply did not like him.

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).

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, employer incurs potential liability for unemployment insurance benefits related to that separation. The conduct for which claimant was discharged did not rise to the level of disqualifying misconduct when contrasted with how the team leader spoke to him. In the plant profanity was an accepted everyday occurrence. The employer opted not to participate in the hearing or present evidence. The employer has not met their burden to prove disqualifying misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The September 5, 2018, (reference 02) 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/rvs