IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DONALD E AUSTIN
Claimant

MECCA
Employer

APPEAL NO: 11A-UI-01802-ST

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/12/10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 24.32(8) – Current Act

STATEMENT OF THE CASE:

The employer appealed a department decision dated February 11, 2011, reference 01, that held the claimant was not discharged for misconduct on December 15, 2010, and benefits are allowed. A telephone hearing was held on March 16, 2011. The claimant participated. Rick Bly, Direct Monitoring Coordinator, and Mick Weitz, Financial Operations Supervisor, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment in May 2005, and last worked for the employer as a full-time drug monitoring technician on December 15, 2010. Claimant worked in the Des Moines office while the main business office is located in Iowa City.

The employer has an employee handbook that contains its policies. The employer does provide progressive discipline that includes written warnings. The employer issued a written warning to claimant on August 26, 2010 for fraternization with clients. Although claimant was verbally warned about giving notice for paid time off and job performance issue(s), he received no written warning.

The business office received a report from the Des Moines office manager of claimant's angry outburst that occurred on December 14. Claimant denies the office manager's report he used profanity in the presence of a client, but he does admit being frustrated in trying to do his job. The employer discharged claimant for the most recent incident in light of his prior conduct.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(8) provides:

> (8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct and/or a current act of misconduct in connection with employment on December 15, 2010.

The employer failed to offer any witness or written statement regarding claimant's conduct at the Des Moines office on December 15. The claimant's denial of an angry outburst with a use of profanity is more credible testimony than a hearsay report to the Iowa City office from a manager who was not present when the incident occurred. This is the most recent incident that moved the employer to discharge and it failed to prove this current act of misconduct.

Although it appears the employer policy provides for written warnings, the only one issued to claimant is for a client fraternization issue on August 26 that was not violated further leading to

discharge. Although the claimant might have been verbally warned about the PTO procedure, this is not related to any further issue leading to discharge. What is clear is that claimant received no final warning or meaningful warning prior to discharge that his job was in jeopardy to the point that a further incident would cause employment termination. Job disqualifying misconduct is not established.

DECISION:

The department decision dated February 11, 2011, reference 01, is affirmed. The claimant was not discharged for misconduct on December 15, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs