IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JAMES JOHNSON
Claimant

PER MAR SECURITY & RESEARCH CORP
Employer

APPEAL NO: 14A-UI-02285-ET

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/12/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 18, 2014, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 24, 2014. The claimant participated in the hearing. Randy Mulder, General Manager and Kathy Sawdy, Branch Human Resources Representative, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time security officer for Per Mar Security & Research from February 11, 2013 to January 17, 2014. He was discharged following four occurrences reported to the employer.

On December 31, 2013, General Manager Randy Mulder received a complaint from a client's truck driver that the claimant was rude and unprofessional. The employer did not provide any specific details about the incident. Operations Manager David Lee spoke to the claimant about the situation January 3, 2014, and the claimant denied being unprofessional but did explain that the client had instructed him not to accept any deliveries because the plant was shut down to deliveries for the holidays.

Between January 7 and January 9, 2014, the claimant trained with Officer Bob Croushore. On January 10, 2014, Officer Croushore told the employer that on January 9, 2014, the claimant had a confrontation with a member of the public who had been tailgating the claimant or driving erratically. The claimant rolled down his window and shouted obscenities at the other driver. The employer did not speak to the claimant about this incident or impose any disciplinary action.

On January 11, 2014, Shift Supervisor Carl Heille reported to Mr. Mulder that the claimant was late arriving for work because he overslept and that when Mr. Heille questioned him about why

he was tardy the claimant became “combative” and stated Mr. Heille was not his boss and could not question him about his incident of tardiness. Mr. Mulder did not speak to the claimant about this situation or impose any disciplinary action.

The final incident occurred January 16, 2014, after an assistant site supervisor at an account in Newton reported that the claimant made an inappropriate comment to a client who commented and was joking about the claimant not wearing insulated coveralls or overalls when it was extremely cold outside to which the claimant was alleged to have replied, “Fuck you.”

Mr. Mulder met with the claimant January 17, 2014, and notified him of the four issues listed above, stated he could no longer trust the claimant to make professional statements and act in a professional manner and consequently terminated the claimant’s employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but

the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant never received a warning about his conduct and the employer did not even find the second or third situations worth, at the least, a conversation with the claimant. The operations manager talked to the claimant about whether he was unprofessional in denying drivers the opportunity to deliver to the employer's client in Creston December 31, 2013, but the claimant explained that occurred because the plant was closed and the claimant had been instructed not to allow any deliveries at that time, which upset the driver. The claimant did not recall the January 9, 2014, incident and while he acknowledged he overslept January 11, 2014, and was tardy as a result, he did not know Mr. Heille was a supervisor and Mr. Heille was upset because the claimant told him firmly he could not stay later than he was scheduled. The claimant denies telling a client employee January 16, 2014, "fuck you" after that employee allegedly made a comment about the claimant not wearing insulated coveralls or overalls.

While the employer makes allegations of misconduct, in each instance there is either not enough evidence to substantiate the charge or the claimant has provided a reasonable explanation for his actions. The employer's witness was not a first-hand observer to any of these situations and in most cases did not find that the claimant's actions, when reported, even warranted a conversation, let alone a formal verbal or written warning. Under these circumstances, the administrative law judge must conclude the employer has not met its burden of proving disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The February 18, 2014, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder
Administrative Law Judge

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Decision Dated and Mailed

je/css