IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

RAYMOND A FOWLER
Claimant

COX MANUFACTURING COMPANY
Employer

APPEAL NO. 13A-UI-03287-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/03/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Cox Manufacturing Company (employer) appealed a representative's March 8, 2013 decision (reference 01) that concluded Raymond Fowler (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 17, 2013. The claimant participated personally. The employer participated by Rob Cox, President; Shelly Groves, Office Manager; and David Beckett, Fabrication Supervisor. The employer offered and Exhibit One was received into evidence.

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 March 7, 2011, as a full-time fabricator. The claimant signed for receipt of the employer's handbook when he was hired and on April 3, 2012. The employer issued the claimant a verbal warning on October 16, 2012, for wearing the wrong kind of steel toed boots. He was issued a verbal two-day suspension on October 16, 2012, when he asked what brand of steel toed boots he should buy. The employer had written warnings on October 16, 2012, but did not give the claimant a copy of the written warnings until the appeal hearing.

On February 5, 2013, the claimant was walking atop six inches of steel and helping to move steel with a crane. This was part of the claimant's job. The fabrication supervisor did not see that the claimant was working and asked the claimant to return to his work area. The claimant could not hear what the supervisor said and asked him what he said. The supervisor said it again and the claimant again asked what he said. The supervisor asked the claimant if he was stupid. The claimant said, "F. Y. Don't call me stupid." The supervisor said, "You're fired, faggot". The claimant used his hand to tip the supervisor's hat off his head. The claimant went to his regular work area and the supervisor told the plant manager that the claimant knocked his hat off his head. The employer terminated the claimant.

REASONING AND CONCLUSIONS OF LAW:

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

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 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 sufficient evidence of job-related misconduct. In this case the supervisor was angry at the claimant because the claimant did not hear him. The claimant was angry at the supervisor for calling him names. Both employees acted inappropriately but only one employee was terminated. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's March 8, 2013 decision (reference 01) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs