IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

JACOB R LUNA Claimant **ARMORED GARDENS LLC** Employer	**APPEAL 19A-UI-02562-NM-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 02/24/19** **Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

STATEMENT OF THE CASE:

On March 25, 2019, the claimant filed an appeal from the March 15, 2019, (reference 01) unemployment insurance decision that denied benefits based on his discharge for conduct not in the best interest of the employer. The parties were properly notified about the hearing. A telephone hearing was held on April 11, 2019. Claimant participated and testified. Employer participated through owner Dan Bush.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on October 26, 2017. Claimant last worked as a part-time shift leader. Claimant was separated from employment on February 26, 2019, when he was discharged.

On January 11, 2019 a new break policy was implemented and copies were placed in various locations around the building. The policy stated that employees were required to take breaks inside the facility and that if they needed to smoke they had to remain outside the kitchen entrance. The policy also said, in bold letters, that employees were not allowed to take breaks inside cars. The reason for the new policy was that several employees, including claimant, were taking longer breaks. The employer also suspected some employees were smoking marijuana in their cars during their break time.

On February 23, 2019 claimant was observed by the bar manager sitting in the car of a former employee during his break time. On February 26, 2019 the general manager, Marc Kopcho, sent claimant a text message asking him to call him. When claimant spoke to Kopcho he was informed that he was being discharged for violating the new break policy, as another manager had seen him take his break in a car. Claimant responded that he was sorry things did not work

out and hung up the phone. Claimant had previously been disciplined for taking extended breaks, but had not received any prior discipline or warning under the new break policy. Claimant denied he was aware of the portion of the new policy prohibiting breaks from being taken in cars.

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:
>
> 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

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, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

There is a dispute between the parties as to whether claimant knew about the portion of the new break policy prohibiting employees from taking breaks in their cars. Claimant's testimony on the issue lacks credibility for several reasons. However, assuming that he did know about the new policy, the conduct for which claimant was discharged was nevertheless merely an isolated incident of poor judgment. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning.

While claimant had received prior disciplinary action regarding the length of his breaks, he had not previously been disciplined under the portion of the new policy prohibiting breaks from being taken in cars. As such, he was not aware that his actions on February 23, 2019 might result in his termination from employment. Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning.

DECISION:

The March 15, 2019, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Nicole Merrill
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs