IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

TAVORIS I ASHFORD
Claimant

BOSTON WINDOW CLEANING INC
THE MILLARD GROUP
Employer

APPEAL NO: 11A-UI-02413-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/16/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Tavoris I. Ashford (claimant) appealed a representative's February 24, 2011 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Boston Window Cleaning, Inc. / The Millard Group (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 23, 2011. The claimant participated in the hearing. Josh Anderson appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 20, 2007. He worked full time as a second shift supervisor at the employer's Iowa City, Iowa janitorial business client. His last day of work was January 19, 2011. The employer suspended him that day and discharged him on January 23, 2011. The reason asserted for the discharge was having three write-ups in a year.

The claimant had been given a write-up on July 16, 2010 for an absence, and on October 1, 2010 he was given a write-up for sending an employee home early purportedly because she was being "lazy." The claimant did not dispute the July write-up, but disagreed with the October write-up, as he denied saying anything derogatory, but had believed he had the supervisory authority to send home an employee who was not working properly.

On the morning of January 19 the employer's site project manager, Mr. Anderson, received a complaint from the client that there was a restroom which had not been fully stocked with toilet paper. Mr. Anderson had another employee check all of the restrooms; that employee reported back that there were a number of the restrooms which did not have a proper stock of toilet paper. The employer held the claimant responsible for the lack of toilet paper stocking in all of

the restrooms, even though the claimant had not been personally responsible for the stocking of all the restrooms. The claimant further denied that he had failed to stock the restrooms for which he was responsible, and indicated that the supply of toilet paper might have more quickly been depleted than usual as the facility had recently changed over to a different product where there was no center cardboard core, so each roll contained less paper than the prior product. However, the employer gave the claimant a write-up for this job performance issue, and since it was his third write-up, the employer discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, 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 is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is receiving the third write-up in a year as a result of the toilet paper stocking job performance issue. Misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. Huntoon, supra. There is no evidence the claimant intentionally failed to ensure there was an adequate supply of toilet paper in all of the restrooms. He had not received any prior write-ups for any similar job performance issues. Under the circumstances of this case, the claimant's failure to ensure there was an adequate supply of toilet paper in all of the restrooms in the facility was at worse the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence, and was a good faith error in judgment or discretion. Overall, the employer has not established that the claimant's conduct was substantial misbehavior. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's February 24, 2011 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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