IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

TOM L BENDIXEN
Claimant

HY-VEE INC
Employer

APPEAL NO. 10A-UI-06475-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/04/10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Hy-Vee (employer) appealed a representative's April 23, 2010 decision (reference 01) that concluded Tom Bendixen (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 June 17, 2010. The claimant participated personally. The employer was represented by Daniel Speir, Attorney at Law, and participated by Clete Hjorth, Manager of Store Operations. The employer offered and Exhibits One through Five were 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 June 4, 2009, as a part-time delivery driver. The claimant signed for receipt of the employer's handbook on June 4, 2009. The claimant had forgotten to punch his time clock before. He always wrote in the correct time later. The employer did not issue the claimant any warnings during his employment.

On December 18, 2009, the claimant attempted to punch out and leave home at 6:02 p.m. The machine would not accept his card. He tried again at 6:03 p.m. and again the machine would not accept his card. He realized that he forgot to punch in at 1:00 p.m. when he arrived at work. He could not find a pen to write in the correct time. He left work for the day. On December 19, 2009, the claimant arrived at work at 8:00 a.m. He wrote in 1:00 p.m. for his arrival time and 6:30 p.m. for his departure time on December 18, 2009. He was busy thinking about the 200 poinsettias he had to deliver to a church by 8:30 a.m.

On December 22, 2010, the employer talked to the claimant about the times the claimant wrote in. The claimant accidentally wrote the wrong time on his time card. 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). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. Henry v. Iowa Department of Job Service, 391 N.W.2d 731 (Iowa App. 1986). Repeated unintentionally careless behavior of claimant towards subordinates and others, after repeated warnings, is misconduct. Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988). There was no evidence presented at the hearing of intent to falsify. The employer provided one incident of carelessness in recording time. The claimant's single act of negligence does not rise to the level of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's April 23, 2010 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