IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

FRED C CRANEY
Claimant

MARY M JENSEN
SABRE COMMUNICATIONS CORP
Employer

APPEAL NO. 11A-UI-10364-HT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/12/11
Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Fred Craney, filed an appeal from a decision dated July 26, 2011, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on August 30, 2011. The claimant participated on his own behalf. The employer, Sabre Communications Corporation (Sabre), participated by Human Resources Generalist Erin Baird.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Fred Craney was employed by Sabre from October 15, 2003 until June 6, 2011 as a full-time forklift operator. He had received the company's revised attendance policy when it was effective in 2008. The employer gauges absenteeism by "occurrences." A tardy or leave early is one-half occurrence, a full day of unexcused absence is one occurrence. An unexcused absence is any that has not been approved in advance.

The progressive disciplinary policy calls for a verbal warning with four occurrences, a written warning with six occurrences, a final written warning at seven occurrences and discharge at the eighth occurrence in a rolling 12-month period. One occurrence will be removed from the total for every month of work with no absences. In the 12 months before he was discharged the claimant had two occurrences in October 2010, which were removed as he had no absences until May 2011. In that month he had four occurrences but was not given the verbal warning as required by the policy.

Around that time the employer was losing production and having to move material and locations due to flooding. The employees were working a great deal of overtime to make up for this. The plant manager informed Mr. Craney, along with other employees, they would have to work on Sunday, June 5, 2011, to help make up for these problems. The claimant worked on Saturday

and when he got off work around 4:00 p.m. he started consuming beers until around 10:00 p.m. He was unable to work the next day due to still being under the influence of the alcohol and did inform the plant manager he would be absent. He said he drank too much because of the stress caused by all the extra hours at work in recent weeks.

The plant manager and the human resources director made the decision to discharge the clamant even though he had not been given the progressive discipline as set out in the policy. It was felt he had "let down the team" by drinking so much he was not able to work.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

871 IAC 24.32(7) provides:

> (7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The claimant was discharged for absenteeism. He did not receive the progressive discipline as set out in the employer's policy. In any event he would not even had reached the level of a written warning for missing work on June 5, 2011, as that was only his fifth absence.

The administrative law judge certainly understands the employer was disappointed and displeased the claimant had had so much to drink on Saturday night he was unable to work on Sunday. But from the testimony provided this was only a one-time occurrence. Since any absence not approved in advance is considered unexcused, which includes illness and family emergencies, it does not appear to matter the reason why he was not at work on June 5, 2011, was for self-induced problems. It would have been unexcused regardless of the reason.

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). 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. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

The administrative law judge does not consider that this one-time incident rises to the level of substantial, job-related misconduct sufficient to warrant a denial of unemployment benefits.

DECISION:

The representative's decision of July 26, 2011, reference 01, is reversed. Fred Craney is qualified for benefits, provided he is otherwise eligible.

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Bonny G. Hendricksmeyer
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs