

cafeteria for food while he waited for his ride. Mr. North placed his money in the machine, but the ordered item became stuck. Mr. North first used his buttocks to bump the machine. Mr. North then kicked the bottom front of the machine. Mr. North then used his buttocks to bump the machine again. The glass front of the machine cracked. Mr. North had experienced problems with this machine in the past. The machine was subsequently replaced for reasons that included, but were not limited to, the damage to the glass. Mr. North had used the same technique to dislodge items from the machine 20-30 times. Mr. North did not intend to damage the machine and did not expect the machine to break. At the time the machine was damaged, there was no one available to whom Mr. North could report the damage. Members of the evening cleaning crew were in the vicinity, witnessed Mr. North's behavior, and reported the incident to the cafeteria manager. The cafeteria manager reported the incident to Human Resources Manager Jeff Houston. Mr. North returned to the cafeteria the next morning, but did not mention to the cafeteria manager that he had damaged the machine. When Mr. North was later confronted about the damage to the machine, he admitted his involvement and asserted the damage was accidental. The machine had been pushed back approximately three inches from its usual position.

The employer has written rules of conduct. Included in the list of rule infractions that subject an employee to possible discharge is "Intentional destruction/misuse of Company or Team Member's property." Mr. North was aware of the work rule, but asserts that his behavior did not fall under the rule, since the damage was unintentional.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. North was discharged for misconduct in connection with his employment. It does not.

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).

Since the claimant was discharged, the employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

Violation of a specific work rule, even off-duty, can constitute misconduct sufficient to disqualify a claimant from unemployment insurance benefits. See Kleidosty v. Employment Appeal Board, 482 N.W.2d 416, 418 (Iowa 1992).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The employer had a work rule regarding damage to company property. The rule did not indicate that it was limited to on-duty behavior. The administrative law judge concludes that the rule would apply to off-duty conduct on the employer's premises. The weight of the evidence in the record indicates that Mr. North used force against a vending in an attempt to dislodge the food item he had purchased. Based on the evidence presented, the administrative law judge is not able to conclude that Mr. North used an excessive amount of force under the circumstances. Better evidence of the amount of force used was available to the employer in the form of eyewitness testimony and written statements from the cleaning crew staff who witnessed the incident. Both forms of evidence were available to the employer, but not presented at the hearing. Based on the evidence presented, the administrative law judge cannot conclude that the damage to the machine was intentional. The damage to the machine may have constituted careless or negligent behavior. However, the evidence indicates that Mr. North had not previously been reprimanded for carelessness or negligence. One act of careless or negligent behavior does not constitute misconduct that would disqualify Mr. North for benefits. See 871 IAC 24.32(1)(a).

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. North was discharged for no disqualifying reason and is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. North.

DECISION:

The Agency representative's decision dated September 13, 2005, reference 01, is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

jt/kjw