IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

BLAKE VICKERY
Claimant

PORTER APPLE CO
Employer

APPEAL NO. 07A-UI-08789-ET

ADMINISTRATIVE LAW JUDGE DECISION

OC: 08-19-07 R: 01
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 11, 2007, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 1, 2007. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Tim Andersen, General Manager, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time dishwasher/general utility/prep cook for Applebee's from May 22, 2007 to August 14, 2007. The claimant was six minutes late July 11; two minutes late July 17; eight minutes late July 21; 18 minutes late July 23; and one minute late July 28, 2007. The employer issued verbal warnings to the claimant but did not document those warnings. On August 14, 2007, the claimant was a no-call/no-show in violation of the employer's policy stating one no-call/no-show is grounds for immediate termination (Employer's Exhibit One). The claimant reported for work August 18, 2007, his next scheduled workday, and told the employer he overslept and the employer terminated his employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the 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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). While the employer maintains the claimant voluntarily quit his job, that argument is rebutted by the fact the claimant showed up for his next scheduled shift, indicating he did not intend to quit. Additionally, although the employer's policy states that one no-call/no-show is cause for immediate termination, 871 Iowa Administrative Code 24.25(4) provides that three no-call/no-shows is presumed to be a voluntary leaving without good cause attributable to the employer. The issue then becomes whether one no-call/no-show absence constitutes disqualifying job misconduct as defined by Iowa law. The administrative law judge concludes it does not because it was an isolated incident. The claimant did have five incidents of tardiness in July 2007 but the employer did not issue any written warnings to him and there is no evidence the claimant knew his job was in jeopardy. Consequently, benefits must be allowed.

DECISION:

The September 11, 2007, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder
Administrative Law Judge

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Decision Dated and Mailed

je/css