IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

WILLIAM R WILLIAMS
Claimant

PELLA CORPORATION
Employer

APPEAL NO. 09A-UI-11802-LT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/01/09
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 7, 2009, reference 02, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on September 1, 2009. Claimant participated. Employer participated through Amber Jaworski, Joel Barrett, and Megan Zimmerman, Department Manager and Immediate Supervisor. Employer's Exhibit 1 was admitted to the record.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as an assembler, had been employed since January 24, 2005 and was separated on July 8, 2009. He was fired for allegedly falsifying by 30 to 40 the number of units he was making each shift according to the actual production and cost reports generated. Zimmerman generally expects production of 24 to 29 units per hour or 129 to 140 screens per shift per team of two or three. She noticed discrepancies on the shift ending date July 1 and started tracking on July 2 when her count revealed a discrepancy of 35 screens, which would have put claimant and his partner Teri up to 100 percent of production expectations. On July 3 with reduced work hours the count was off by 25 screens for both claimant and Teri, which again would have put them at a 100 percent production rate. On July 7 the count was off by 34 screens and did not reach 100 percent but there were a number of quality issues with claimant's production that night. On July 8 he worked by himself and the count was over the reported production by an estimated 20 screens. He did not work on July 6 and the production and report numbers for Teri matched. Employer interviewed claimant who said he recounted screens if he had to reroll them and estimated the reroll count to be three or four per shift. Teri estimated her reroll count at once per week. Each team member keeps an individual count of screens per shift and the team member totals are reported together on a dry erase sheet by varying individuals at the end of the shift. There is an operator stamp on each screen but Zimmerman counted all screens for the team rather than for individuals. Claimant

was filling in for a person on maternity leave and had not undergone a full training period since he often filled in for other workers who were ill or on vacation. The team size varied from two to three.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. The employer's count did not break down screen counts by individual team members' stamps and counted only one shift during which claimant was working alone, which do not provide a sufficient sample to account for coincidence or a statistical anomaly or attribute the miscounts to claimant directly, establish deliberation on his part since there was no comparison to earlier performance standards and counts involving claimant or other team members. Thus, employer has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Benefits are allowed.

DECISION:

The August 7, 2009, reference 02, decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/css