IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

MARVELL J STENNIS Claimant **T M INCORPORATED** Employer	**APPEAL 17A-UI-12461-DL-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 12/25/16** **Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from the November 30, 2017, (reference 03) unemployment insurance decision that allowed benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on December 22, 2017. Claimant did not respond to the hearing notice instruction by registering for the hearing and did not participate. Employer participated through human resource administrator Scot Cort. Employer's Exhibit 1 was received.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time repack/receiving technician at T M Logistics/Hodge Company from 2011, through October 30, 2017. Most recently, on October 20, 2017, he failed to follow an order packing procedure that caused a customer's line to shut down. He signed off on sending an incorrect part to a customer's plant. The customer discovered the error and reported it to the employer. Supervisor Faye Lovell[1] investigated and found the correct part was found in the warehouse in a "problem row." Claimant signed off on placing it there. Cort did not have a record or recollection of claimant's response to the allegation on October 30. At the fact-finding interview, claimant recalled that he and a coworker[2] could not locate the ticket for one of the two pallets going to that customer. The coworker did not sign documentation regarding that pallet and was not disciplined or discharged.

On June 9, 2016, Lovell warned claimant in writing about working on loads in sequential order. (Employer's Exhibit 1 p. 6) Lovell warned him in writing on February 3, 2017, about failure to complete work before leaving work for the day. (Employer's Exhibit 1 p. 5) On June 2, 2016, Lovell warned claimant in writing about not completing a load before he left for the day. (Employer's Exhibit 1 p. 7) The employer assigned him a performance improvement plan (PIP) from June 7 through July 5, 2017, to correct performance related to following the first-in-first-out

[1] Lovell did not participate in the hearing.
[2] Employer did not have information about the coworker involved.

procedure and leaving orders unfinished. Department coordinator John Graves[3] and Lovell signed off on the completion of the PIP. (Employer's Exhibit 1, pp. 8 - 12)

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 section 96.5(2)a provides:

> **Causes for disqualification.**
>
> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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.

Iowa Admin. Code r. 871-24.32(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. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

Misconduct "must be substantial" to justify the denial of unemployment benefits. *Lee*, 616 N.W.2d at 665 (citation omitted). "Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." *Id.* (citation omitted). …the definition of misconduct requires more than a "disregard" it requires a "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." Iowa Admin. Code r. 871–24.32(1)(a) (emphasis added).

Iowa Admin. Code r. 871-24.32(4) provides:

> (4) *Report required.* The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish

[3] Graves did not participate at hearing.

> available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Whether an employee violated an employer's policies is a different issue from whether the employee is disqualified for misconduct for purposes of unemployment insurance benefits. *See Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000) ("Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." (Quoting *Reigelsberger*, 500 N.W.2d at 66.)).

The conduct for which claimant was discharged was an isolated incident of poor judgment in not following up with the missing ticket or the part placed in "problem row." Inasmuch as employer had not previously warned claimant about the issue of the error leading to the separation, it 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. Training or general notice to staff about a policy is not considered a disciplinary warning. A warning for failure to complete work or not following the first-in-first-out procedure is not similar to making a shipping error and the employer's simple accrual of a certain number of warnings counting towards discharge does not establish repeated negligence or deliberation and is not dispositive of the issue of misconduct for the purpose of determining eligibility for unemployment insurance benefits. Furthermore, another worker involved in the same or similar incidents was not disciplined, thus the claimant seems to have been the subject of the disparate application of the policy, which cannot support a disqualification from benefits.

DECISION:

The November 30, 2017, (reference 03) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

_____
Dévon M. Lewis
Administrative Law Judge

_____
Decision Dated and Mailed

dml/rvs