IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

CLAYTON TRAGER
Claimant

ALLEN PRINTING COMPANY INC
Employer

APPEAL NO. 07A-UI-03373-ET

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03-04-07 R: 02
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 27, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 3, 2007. The claimant participated in the hearing through a written statement. Mary Ann Allen, COO and James Gilliam participated in the hearing on behalf of the employer. Claimant's Exhibit A and Employer's Exhibits One through Four were 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 full-time acting manager for Allen Printing Company from October 1977 to December 13, 2006. He was discharged for double and triple billing the company for expenses totaling over $12,000 over a period of less than one year (Employer's Exhibit Three). In August 2006 the 97 year-old owner asked his daughter-in-law, Mary Ann Allen, to help with the day-to-day operations of the company. Ms. Allen had worked as an internal auditor, accountant, Human Resources Director and possessed general management skills. While interviewing current employees, reviewing financial statements and meeting with the company financial advisor and CPA, Ms. Allen noted several irregularities and conducted a further investigation. Because she did not wish to damage the reputation of her father-in-law or the claimant within their community by asking questions of local residents and businesses, she limited her investigation to internal sources such as the current books of the company and corroborating evidence outside of the immediate community. She discovered the claimant had been padding his expense account by using several transactions involving Comp USA for computer and software purchases and submitting actual receipts, copies of his credit card statement including the same expense, the packing slip or internet confirmation of the order for reimbursement and the actual invoice (Employer's Exhibit Three). On one occasion the claimant changed the dollar figures on an invoice and gained $60.00 (Employer's Exhibit Three). Among other expenses, the claimant charged the employer for five computers while

only receiving three and was charged for nine copies of an Adobe software program while only receiving three (Employer's Exhibit Three). Additionally, he charged the employer for two ads in the St. Louis Post Dispatch newspaper when it only ran once and charged the employer for an ad in the Quad City newspaper that never ran at all (Employer's Exhibit Three). The employer also learned the claimant was selling its waste paper to Mason City Recycling and listed himself as the owner, thus, having the checks made out to him personally (Employer's Exhibit Four). After reviewing the accounting of funds Ms. Allen met with the claimant on December 13, 2006, to review his expense account and management of the company. Ms. Allen began going through her documentation but after a short time the claimant said it could not be true and she must have made a mistake. Although the claimant denied any responsibility he did offer to reimburse the employer until he found out the total was over $12,000.00. The employer offered the claimant a severance agreement whereby it would not pursue civil or criminal remedies or seek reimbursement if the claimant agreed not to compete or interfere with the employer's business interests and the claimant signed that agreement December 14, 2006 (Employer's Exhibit Two). The claimant denies Ms. Allen's allegations (Claimant's Exhibit A).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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).

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). 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 claimant denies any willful wrongdoing, the employer produced compelling documentation that the claimant double and triple billed the employer for the same item and billed it for goods and services not received. Consequently, the administrative law judge must conclude that because there were so many incidents, the claimant's actions were either intentional and fraudulent or so careless, negligent, or incompetent as to qualify as willful misconduct in culpability and his conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The March 27, 2007, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Julie Elder
Administrative Law Judge

_____
Decision Dated and Mailed

je/css