IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

PATRICIA TICKAL
Claimant

AADG INC
Employer

APPEAL NO: 10A-UI-00199-ET

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03-15-09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 5, 2010, 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 February 10, 2010. The claimant participated in the hearing. Dan McGuire, Employee Relations Manager participated in the hearing on behalf of the employer. Employer's Exhibits One, Two and Three 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 production worker for Curries-Graham from February 8, 1999 to December 15, 2009. On December 11, 2009, the claimant and co-worker Nina Henley both wanted to use a floor pallet jack and saw the other one walking toward it, and raced to the floor cart arriving at the same time, each grabbing a handle (Employer's Exhibit One). Both were moving at the same time and the claimant said, "No. This time it's my turn first," as she backed up with the cart (Employer's Exhibit Two). Ms. Henley slipped and the claimant thinks they may have bumped each other when she slipped but denies ever pushing or shoving Ms. Henley and "would not ever do anything like that" (Employer's Exhibit One). Ms. Henley went to the lead desk and made a complaint, stating she was on her way to get the pallet jack when she stopped to remove a sliver from her finger and then put her hands on the pallet jack when "suddenly" the claimant came up behind her and forced the steering away from Ms. Henley and into her own hands (Employer's Exhibit Two). The claimant said, "You are not getting this again" and then pushed her away from the jack with her hip (Employer's Exhibit Two). The "force" of the push moved her back two steps but she was not injured (Employer's Exhibit Two). Three weeks previous they were both waiting for the pallet jack and Ms. Henley arrived first and they exchanged words (Employer's Exhibit Two). There were approximately 21 people in the area but only the claimant, Ms. Henley and Pamela Gribben witnessed the final incident. Ms. Gribben stated she heard a commotion and looked over and saw Nina and Patty both trying to get the floor jack (Employer's Exhibit Three). She then saw

Ms. Tickal give Ms. Henley a "very stern shove with her butt, and drove away with the floor jack" (Employer's Exhibit Three). The claimant had not received any previous warnings in the past that the employer had documented but it felt the incident was serious enough to warrant termination of 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 claimant may not have remembered giving Ms. Henley a hip check trying to gain control of the floor jack, it seems clear that she did so from both Ms. Henley's and Ms. Gribben's statements about the incident. They had raced to get the floor jack previously in a joking manner and there is no reason to believe that the claimant was trying to injure Ms. Henley by her actions but that they

simply both wanted the floor jack to do their job. The claimant felt it was her turn to use the floor jack since Ms. Henley used it first the last time but Ms. Henley still went for the floor jack with gusto and her actions could have caused the same physical situation for the claimant. There is no evidence that Ms. Henley was injured. Both parties acted inappropriately in racing to the floor jack and half-heartedly arguing about who got to use the floor jack next. Ms. Gribben did not see the beginning of the incident but only the end. She did not see the claimant laughing as she went for the floor jack. The claimant had never been written up during the previous ten years of her employment and this would have to be considered an isolated incident of poor judgment on her part. She gave the only first-person account and her testimony was credible. Consequently, the administrative law judge must conclude that the claimant's actions do not rise to the level of disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The January 5, 2010, reference 01, decision is reversed. 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