IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

CURT GUTHRIE
Claimant

STONE MOUNTAIN ENTERPRISES LLC
SUPER 8 – SPIRIT LAKE
Employer

APPEAL NO: 12A-UI-05559-B

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/15/12
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Curt Guthrie (claimant) appealed an unemployment insurance decision dated May 8, 2012, reference 02, which held that he was not eligible for unemployment insurance benefits because he was discharged from Super 8 – Spirit Lake (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Spencer, Iowa, on September 25, 2012. The claimant participated in the hearing with Attorney John Sandy. The employer participated through Ramada Inn General Manager Alissa Welch and Super 8 General Manager Matt Schmeling. Employer's Exhibit One and Claimant's Exhibits A, B, and C were admitted into evidence. This hearing was consolidated with Appeal Number 12A-UI-05558-B, since it involves the same parties and facts. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired full-time as maintenance personnel on September 2, 2005 for AmericInn. This hotel has a pool and the employer paid for the claimant to be trained and certified as a Certified Pool Operator (CPO) on October 20, 2005. The claimant denies that he ever worked on or maintained AmericInn's pool but then he also denied receiving CPO training until a couple years after he was hired. He testified that he does have a sideline business in which he takes care of six private pools.

On approximately January 9, 2007, the claimant transferred to work for Ramada Inn part-time and for the Super 8 part-time, since all three hotels are owned by the same employer. The Ramada Inn Hotel has a pool, but Super 8 does not. General Manager Alissa Welch was hired in September 2011 and, at that time, she directed the claimant to take care of the pool but he refused. Ms. Welch contacted management and reported the claimant refused to take care of the pool and the employer advised her to start looking for another employee who would take care of it. The

claimant's testimony was inconsistent as to whether he took care of the pool. He initially said that he did take care of it and never refused to take care of it, only to later testify that he "revoked" his CPO license in April 2011. The claimant denied that it was part of his regular job duties, but the evidence confirms that it was.

Ms. Welch asked the claimant to fix the guest laundry machine on January 4, 2012 but he refused. The laundry facility was down for a week and Ms. Welch discovered later that it was working. The claimant never discussed this with her. On January 11, 2012, the employer rented out a room to a guest only to discover the claimant was painting that room. He had not advised the employer he was painting that room and insisted that he had no duty to advise the employer if he was painting a room. The employer said the claimant was on duty over the weekends but they were repeatedly unable to contact him. The claimant argued that he was not on duty during the weekends.

The final incident was when the employer was locked out of a room on April 14, 2012 and could not get a hold of the claimant. He testified that the employer needed to call a repair service company if they had problems during nights or weekends. The employer called him and left a voice mail message telling him that he was fired. The claimant returned that call and stated that the employer had to fire him in person. No disciplinary warnings were issued to him prior to his termination.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). 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. However, if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as employer had not previously warned the claimant about any of the issues 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. Benefits are allowed.

DECISION:

The unemployment insurance decision dated May 8, 2012, reference 02, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Susan D. Ackerman
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw