IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

BRADLEY K OVERTON
Claimant

AMERICAN ORDNANCE LLC
Employer

APPEAL NO. 09A-UI-10168-LT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/28/09
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 8, 2009, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on August 3, 2009. Claimant participated. Employer participated through Chuck Griffin, Rick Fisch, security officer, and George Randall, security training officer.

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 a production worker and was separated on June 3, 2009. On May 28 Fisch was working the exit gate and as a part of his daily routine randomly searched employees' bags and found several cans of spray degreaser in claimant's lunch cooler, which he believed were property of the employer. He also searched a half gallon cooler claimant brings ice water in to drink every day and found some items that appeared to be trash along with Dove daily hydrating cleansing cloths, which claimant denied were his and were not property of employer. When claimant went to open the lid of the lunch box cooler unbeknownst to him it was hung up by some cans of the degreaser that were wedged in place. His hands shake regardless of stress on occasion and because he had been the victim of multiple pranks earlier in the employment without requested intervention from employer he said, "This is bullshit, this has got to stop" when asked to explain what the items were. A plastic bag was looped to the lunch cooler handle and contained two cans of degreaser covered by two latex rubber gloves. He wears wrist braces at work periodically and stores them with aspirin and muscle cream in the plastic bag tied to the cooler. Claimant works in a bay between 700 and 1000 feet away from where his coolers are stored, which is accessible to numerous employees from multiple buildings and two or three other employees who entered and left the building. Approximately 25 other people were in the building that day and there are two entrance gates to that building. Fork truck drivers also have access to the building in order to move product. Some employees have work assignment transfers between buildings on the

same shift. He noticed nothing odd at break when he drank all of the ice water and ate his lunch and did not see them again until he was getting ready to leave for the day, three and one-half hours later. After not feeling well and working ten hours of lifting shelves, pushing carts and sweeping floors he did not pay much attention to the coolers. Other employees had engaged in pranks or horseplay with him before by putting his lunch pail in the rafters, taping his lunch cooler, which removed Disney vacation stickers when pulled off, and put grease on the lunch cooler handle. He had reported these issues to management until he was told not to "cry about that anymore" and "live with the language and stuff that goes on out there." In the last six months, another employee grabbed him by the throat but did not report it again as he was told after an earlier report if he mentioned it again they would both be fired. It has been nine years since he worked on small engine repair so he has no need for degreaser, especially in that quantity. Even when he did work with small engines, he used solvents then rather than degreaser. He did not use cans of degreaser in his duties at work.

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).

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. From the totality of the circumstances and available evidence, it is reasonable to conclude that claimant was the victim of a prank that resulted in a very unfortunate conclusion. The employer has not met the burden of proof to establish that claimant acted deliberately or with knowledge of the items in his personal containers when he was leaving the facility. Benefits are allowed.

DECISION:

The July 8, 2009, reference 01, 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/pjs