IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

STEVEN J FENTON
Claimant

WRENCH N GO INC
Employer

APPEAL NO. 13A-UI-09161-NT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/30/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Wrench N Go, Inc. filed a timely appeal from a representative's decision dated July 30, 2013, reference 02, which held that the claimant was discharged under non disqualifying conditions. After due notice, a telephone hearing was held on September 12, 2013. Mr. Fenton participated personally. The employer participated by Ms. Jackie Nolan, Hearing Representative, and witnesses: Mr. Jim Logerquist, Director of Human Resources; Mr. Kale Sponsler, Regional Director of Operations; Mr. Jake Juhl, Assistant Manager; and Mr. John Hoefing, Facility Manager.

ISSUE:

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

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Steven Fenton was employed by Wrench N Go, Inc. from January 14, 2006 until July 1, 2013 when he was discharged for unsatisfactory work performance. Mr. Fenton was employed as a full-time operation supervisor at the company's automobile and dismantling facility in Des Moines, Iowa. Claimant was paid by salary. His immediate supervisor was John Hoefing.

The claimant was discharged on July 1, 2013 after he failed to meet performance quotas that had been set by the company for the preparation setting and crushing of automobiles at the Des Moines facility. The employer's expectation was that 100 cars per week would be prepared for dismantling by having fluids removed from them, that 100 cars would be set out for self-dismantling by customers per week, and that 100 cars per week would be removed from the facility for crushing. The employer had a steady supply of inoperable vehicles to be rotated through the dismantling lot and the employer expected that Mr. Fenton would oversee the work of the employees under him to insure that the weekly quotas in each category were being met.

Due to factors such as lack of staffing, the claimant at times was unable to meet expectations and had been warned about meeting expectations on June 17, 2011, January 24, 2012, and most recently on May 28, 2013. In the May 28, 2013 meeting Mr. Fenton was informed that failure to meet the employer's expectations in the future might lead to further disciplinary action and/or termination.

In the month following the claimant's May warning, Mr. Fenton had difficulty meeting the employer's expectations because a sufficient number of hourly employees were not on duty to allow the expectations to be met. During the final week of June 2013, Mr. Fenton and the employees under his supervision had processed 93 of the expected 100 cars, had set 90 of the 100 expected cars and had met the expectations for crushed cars. During that week Mr. Fenton was two employees short during three days of the week and one employee short one day. Mr. Fenton was required to take the afternoon of Friday, June 28, off work as he had a pre-scheduled cardiologist appointment. When the employer tallied the number of processed, set and crushed vehicles for that week, they determined that Mr. Fenton had not met the expectations set forth in the most recent warning and the claimant was discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 proof in establishing job disqualifying 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 the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants the denial unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of unemployment insurance benefits. Such misconduct must be "substantial." When based upon 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 intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa 1988).

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, the employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as the evidence in the record establishes that the claimant was attempting to meet the employer's expectations, but was unable to do so due to factors beyond his control such as lack of a full complement of workers and the necessity the claimant take off work for a pre-scheduled cardiologist appointment, the administrative law judge concludes that the claimant was not intentionally performing his duties below his capabilities. The evidence in the record does not establish that Mr. Fenton's unsatisfactory performance was due to "wrongful intent" but due to factors that were largely beyond his control. The administrative law judge notes the facility most recently has not been able to meet its own expectations and the employer cites the lack of available staff, the same reason cited by Mr. Fenton for his failure to meet the employer's expectations.

While the decision to terminate Mr. Fenton may have been a sound decision from a management viewpoint, the evidence in the record does not establish intentional, disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits.

DECISION:

The representative's decision dated July 30, 2013, reference 02, is affirmed. Claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

_____
Terence P. Nice
Administrative Law Judge

_____
Decision Dated and Mailed

pjs/pjs