IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

RANDY CHUMLEY
Claimant

MOTION INDUSTRIES
Employer

APPEAL NO: 10A-UI-02857-BT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/24/10
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Randy Chumley (claimant) appealed an unemployment insurance decision dated February 11, 2010, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Motion Industries (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 6, 2010. The claimant participated in the hearing. The employer participated through Steve Fleming, Branch Manager. Employer's Exhibit One was admitted into evidence. 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 employer discharged the claimant for work-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is an industrial power transmission sales company. The claimant was hired on February 13, 2006 and transferred to the Colorado branch as a full-time inside salesperson on October 3, 2009. He was discharged on January 26, 2010 for customer service issues and an unsatisfactory performance. A written warning was issued to him on November 17, 2009 for being unprofessional with customers and vendors. Although the warning stated that the claimant had received verbal warnings on October 22, 2009 and October 26, 2009, the claimant disagrees. He testified that there were no formal warnings issued to him but instead a comment was made to work on this or that. The written warning indicates that the verbal counseling was documented but no documentation was provided for the hearing.

The claimant worked with a customer in mid-December 2009 who had requested not to work with the claimant. The employer testified the customer did not like to work with the claimant because he was unprofessional but the claimant testified the customer simply chose to work with one person without changing. The claimant said he was called by someone with that

customer and simply provided the requested information. The employer testified the claimant was counseled over that incident but the claimant denies that claim.

The employer testified that there were numerous complaints about not wanting to work with the claimant. He stated that the final straw occurred on January 14, 2010 when he heard the claimant say to a customer from Chicago, "rack that up to our stimulus" and "I'd sure like to meet a person like you." The claimant denies making those statements but does admit talking about politics. However, he denies saying anything derogatory or offensive and believed they were having a friendly conversation. After receiving the complaint, the branch manager planned on issuing the claimant a final written warning but had to go through the human resources department. The human resource person advised the branch manager to discharge the claimant instead of issuing a final written warning. The termination did not occur until January 26, 2010 since the human resources person was out of the office.

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 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). 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).

The claimant was discharged on January 26, 2010 for offending a customer on January 14, 2010 when discussing politics. The claimant denies saying anything offensive and the comments the branch manager heard were not inappropriate per se. Misconduct must be substantial in nature to support a disqualification from unemployment benefits. Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1982). The focus is on deliberate, intentional, or culpable acts by the employee. Id. The claimant thought he was having a friendly conversation with the customer and while he probably should not have discussed politics, he meant no harm. Inasmuch as the employer has not established a current or final act of misconduct, benefits are allowed.

DECISION:

The unemployment insurance decision dated February 11, 2010, reference 01, 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/pjs