

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 16, 2003. The claimant worked as a full-time social worker/admissions counselor. When the claimant started working, she heard rumors about some employees' affairs. The claimant received a copy of the employee handbook. The handbook informs employees they can be discharged if their conduct is detrimental to the employer and results in serious negative public relations. (Employer Exhibit 2).

On December 7, 2004, the employer talked to the claimant because she appeared to be upset. The claimant agreed that when she became irritated about a work-related issue, she would talk to Blakestad. (Employer Exhibit 3.) On March 18, 2005, the employer gave the claimant another warning. The employer issued this warning after learning the claimant made remarks about the administrator holding her responsible for the low census. The employer also heard the claimant talk about layoffs after employees' hours had been reduced. After the employer talked to her, the claimant indicated she was frustrated and had concerns about job security like other employees. However, the claimant indicated she would be proactive and maintain a positive attitude in the future. (Employer Exhibit 4.)

On July 27, the claimant called Richmond, a co-worker and friend, at home to find out how she was feeling. Richmond was recuperating from surgery. When Richmond asked if anything new was going on at work, the claimant told her the director of nursing was on vacation and extended her vacation a few days. The claimant also remarked that she thought it was somewhat strange that Blakestad took a vacation day on a Thursday instead of a Friday.

Richmond returned to work on July 5. On July 9, the claimant and Richmond planned to go out with some friends. The claimant called and told Richmond that she was in Des Moines and could not go out that night with her. The claimant cancelled this social outing because she was going to Des Moines to see a very close personal friend. When the claimant called, she told Richmond she was already in Des Moines when she was not. Richmond knew from her caller ID the claimant had not called from Des Moines. After this incident, Richmond no longer trusted the claimant and their friendship deteriorated.

Even though there were not any recent rumors being circulated on July 27, Richmond told the director of nursing about a June 27 phone conversation she had with the claimant. Richmond reported that the claimant told her she suspected two employees were having an affair and was going to watch them. The director of nursing relayed Richmond's story to Blakestad. After Richmond made a written statement, on August 1 the employer discharged the claimant for engaging in unprofessional conduct by engaging in false rumors with another employee.

Although the claimant denied talking about anyone having an affair, the employer considered Richmond more credible than the claimant. In the past, when the employer checked into an issue the claimant had reported, other employees' versions of an incident did not support the claimant's statements. On August 1, 2005, the employer discharged the claimant for again engaging in conduct that was unprofessional and could result in damage to the employer's reputation.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

This case revolves around a credibility issue as to what was said in a private conversation between two friends on June 27. Based on the foregoing reasons, the administrative law judge finds the claimant more credible than Richmond. For some reason, the friendship between the claimant and Richmond deteriorated after July 9. It is difficult to understand why Richmond found the claimant so untrustworthy after the claimant told Richmond she was in Des Moines when she was not, but planned to be there. When Richmond told the director of nursing about her June 27, 2005 conversation, there were no rumors going on. Richmond's explanation as to why she waited so long before she said anything about the June 27 is not convincing. Since Richmond's testimony is not credible, the finding of fact reflects the claimant's version of the June 27 conversation.

In the alternative, even if the claimant engaged in gossip or speculated about individuals with a friend or co-worker in a private conversation outside of work on June 27, this does not establish that the claimant intentionally or substantially disregarded of the employer's interests. While it is understandable for the parties named as being involved in an affair to be upset, the evidence does not establish that the claimant committed work-connected misconduct. As of July 31, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's August 22, 2005 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of July 31, 2005, the claimant is qualified to receive benefits provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/s