IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

BRIAN M FISHER
Claimant

TRINITY STRUCTURAL TOWERS INC
Employer

APPEAL NO: 12A-UI-10575-DWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 08/05/12
Claimant: Appellant (2)

Iowa Code § 96.5(2)a- Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's August 27, 2012 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. Christine Hopwood, the human resource manager, appeared on the employer's behalf. During the hearing, Employer Exhibits One through Six were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in January 2009. He worked as a full-time lead employee in the paint department. The claimant received a copy of the employer's Performance Standards and Guidelines on December 29, 2009. (Employer Exhibit One.) The employer's policy informs employees they can be discharged without a prior warning if they use abusive, threatening, or provocative language toward another person. (Employer Exhibit Two.)

The morning of August 3, 2012, around 12:40 a.m. the claimant and M.H., a blasting department supervisor, engaged in a verbal confrontation. The claimant's immediate supervisor was not at work. The claimant did not know that M.H. had been asked to supervise both the blasting and the paint departments. Prior to 12:40 a.m., M.H. came to the claimant at various times checking up on the work in the paint department. The claimant did not appreciate M.H. telling him what to do when his immediate supervisor did not do this. The claimant became frustrated after M.H. told the claimant to send painting employees home at 1 a.m. (Employer Exhibits Two and Three.) There was more work to do in the paint department after 1 a.m.

M.H. reported the confrontation he had with the claimant. Hopwood talked to the claimant later on August 3. Hopwood explained that since the claimant's supervisor was not at work, the employer had asked M.H. to oversee the painting department. Hopwood told the claimant that even if he disagreed with M.H.'s decision, he had to follow his instructions and show M.H. respect.

After Hopwood talked to the claimant, he reported to his scheduled August 3-4 shift. M.H. reported the following: Around 10 20 p.m. M.H. asked the claimant about the status of a section in blast. The claimant told M.H. that he did not know the status of the progress on this section but would find out at 10:30 p.m. When the claimant talked to M.H., he referred to him as "Boss." M.H. had overheard a maintenance call about a blast hose and asked the claimant if he knew the status of a blast hose. M.H. reported that the claimant said, "If it's any of your God Damn Business I Will let you fucking know." M.H. walked away and made arrangements with security to escort the claimant off the premises. (Employer Exhibit Four.)

After receiving M.H.'s report, the employer talked to several employees, but did not ask the claimant what happened the evening of August 3. J.S., another supervisor, learned from M.H. that he and the claimant had a verbal confrontation during early morning hours on August 3. The claimant also talked to J.S. and told him that M.H. tried to micromanage and had pushed the claimant's buttons. J.S. reported to Hopwood that on the evening of August 3 the claimant told him that he had told M.H. "it wasn't his business and not to fucking worry about it." (Employer Exhibit Five.) Another employee, J.O. reported he heard the claimant tell M.H. that he was not his boss and don't come over and run my area. (Employer Exhibit Six.)

The employer discharged the claimant on August 8, 2012. During his employment, the claimant had received some written warnings, but the employer did not consider these warnings when deciding to discharge the claimant. The employer discharged the claimant for he what he told M.H. The employer concluded the claimant violated the employer's performance and guideline policy, rule number 11. (Employer Exhibit One.) If the claimant had not had any writing warnings, the employer still would have discharged him for what he said to M.H. on August 3.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him 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).

The law defines misconduct as:

> 1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
>
> 2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
>
> 3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer's reliance on hearsay information, statements made by employees outside the hearing, cannot be given as much weight as the claimant's testimony. When the employer made the

decision to discharge the claimant, the employer personally talked to the employees, but they did not testify at the hearing. The claimant's testimony is credible and must be given more weight than the employer's hearsay information. Therefore, the claimant did not swear at M.H.

It appears problems between the claimant and M.H. may have been prevented if the employer had told the claimant before August 3 that M.H. would be supervising the paint department when the claimant's supervisor was gone. It is understandable why the claimant became frustrated when a supervisor from the blasting department told the claimant what to during his August 2-3 shift, when the claimant's supervisor did not do this and instead let the claimant make decisions.

Sometime before his August 3-4 shift, Hopwood talked to the claimant and then explained that M.H. was the paint department supervisor while the claimant's supervisor was not at work. The evidence indicates the claimant may have displayed an attitude toward M.H. shortly before 10:30 p.m. on August 3. As the acting supervisor in the paint department, M.H. immediately went to security to have the claimant escorted out after the claimant displayed an attitude toward him. Since M.H. had a confrontation with the claimant the previous shift, his hearsay statement (Employer Exhibit Four) is not given as much weight as J.S.'s hearsay statement (Employer Exhibit Five). The two reports are different.

Assume the claimant made the comment J.S. reported to Hopwood. If the claimant said fucking, he did when was upset with M.H. Telling M.H. it was not his business and not to fucking worry about it shows poor judgment. If the claimant made this comment, it does not rise to the level of work-connected misconduct.

When the claimant started his shift on August 3, he was still frustrated and upset with M.H. He may have displayed an attitude that was not as respectful as he should have shown. Since M.H. did not participate at the hearing, it is not known if he felt the claimant did not show him respect. The employer discharged the claimant for business reasons, but the evidence does not establish that the claimant committed work-connected misconduct. As of August 5, 2012, the claimant is qualified to receive benefits.

DECISION:

The representative's August 27, 2012 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant's August 3 conduct and comments do not rise to the level of work-connected misconduct. As of August 5, 2012, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw