IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

KELLY D WOLFE
Claimant

CARE INITIATIVES
Employer

APPEAL NO. 10A-UI-17234-SWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/14/10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated December 8, 2010, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on January 31, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Susan Schneider, Attorney at Law, participated in the hearing on behalf of the employer with witnesses, Vicky Stout and Melonie Anderson. Exhibits One through Six were admitted into evidence at the hearing. This is duplicate decision to the one issued in 10A-UI-17235-SWT, which appears to be due to wages being reported under two location account numbers for this employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time as a cook for the employer from October 13, 2004, to November 10, 2010. He had been warned on June 18 and August 10, 2010, for working over his authorized time. He received a final warning on November 3, 2010, after a certified medication aide complained that the claimant had unpleasantly asked her if all the residents had their juice. The claimant knew his job was in jeopardy after the final warning.

On November 8, 2010, the claimant was given the task of cooking minute steaks for lunch, which was a food item he had never cooked before. He cooked the meat at the correct temperature for over 2.5 hours. He followed the employer's procedures by testing the temperatures of 10 to 15 pieces of meat on each pan with a thermometer. Every sample piece exceeded the temperature guideline for serving. After the meat was served, some residents discovered the meat was bloody in the center and appeared undercooked. Many residents rejected the meat. The claimant did not deliberately serve undercooked meat to residents and believed, based on the temperatures, he had taken and recorded that the meat was properly cooked.

The employer discharged the claimant on November 10, 2010, for not properly cooking the meat, with consideration of his prior record of discipline.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

871 IAC 24.32(8) provides:

> (8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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 substantial and 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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe the clamant testimony that he had cooked the meat at the proper temperature and properly tested the temperature of about 10-15 pieces on each pan. No current act of willful and substantial misconduct has been proven in this case. At most the evidence would show unsatisfactory work performance not rising to the level of disqualifying misconduct in culpability.

DECISION:

The unemployment insurance decision dated December 8, 2010, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise
Administrative Law Judge

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Decision Dated and Mailed

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