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

ROBIN L WEISBROOK
Claimant

HCM INC
Employer

APPEAL NO: 11A-UI-04527-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/27/11
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's March 29, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant's employment separation was for nondisqualifying reasons. The claimant participated in the hearing with her attorney, Jon Johnson. Diane Schaffner, the administrator, appeared on the employer's behalf. 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 claimant voluntarily quit her employment for reasons that qualify her to receive benefits, or did the employer discharge her for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in July 2010. She worked as the employer's full-time dietary manager. When the previous manager left she told the claimant that T., a regional supervisor, did not want the claimant as the dietary manager. The claimant gave the employer a month's notice that she was leaving in early February and started looking for another job. After Schaffner became the acting administrator, she talked to the claimant in mid January about rescinding her resignation.

The claimant explained to Schaffner that she was looking for another job because of the way T. treated her and that he wanted to change the her hours. After Schaffner talked to the claimant and she thought about the job over the weekend, the claimant rescinded her resignation on January 17, 2011. She understood the employer allowed her to rescind her resignation.

On February 23, 2011, the claimant had a meeting with T. and Schaffner. The employer asked for the meeting because they understood the claimant was still looking for another job. The claimant told the employer she had been looking for another job when she put in her resignation. The claimant had not been looking for another job after January 17 when she rescinded her resignation. T. then told the claimant that it was probably best that she resign. The employer then told the claimant an ad would be placed in the paper for her position.

Initially, the employer wanted applications on file so the employer could hire someone when the claimant resigned. The claimant, however, understood that because the employer was going to put an ad in the paper for her position, she had been or would soon be discharged.

The claimant called in sick on February 24. That day or the next she learned the employer had placed an ad for her job. Co-workers told her that the lock on her door had been replaced, which had happened to the previous administrator the day before she no longer had a job. The claimant sent Schaffner an email message on February 24 indicating she understood she had been discharged. There is no evidence the employer responded to the claimant's email to clear up any misunderstanding the claimant may have had. As a result of the above factors, the claimant assumed the employer had discharged her and did not return to work.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. When the employer did not respond to the claimant's February 24 email, the claimant reasonably believed the employer did not want her working any longer and effectively discharged her.

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).

The employer may not have wanted the claimant working any longer, but there is no evidence the claimant voluntarily quit her employment. It appeared that while Schaffner wanted the claimant to continue her employment, T. did not. If that was not the case, there is no logical reason for the February 23, 2011 meeting between the three of them. Since the claimant did not commit work-connected misconduct, she is qualified to receive benefits as of February 27, 2011.

DECISION:

The representative's March 29, 2011 determination (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of

February 27, 2011, the claimant is qualified to receive benefits, provided she 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/css