IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

TARA L DIXON
Claimant

WIEBLERS HARLEY DAVIDSON INC
Employer

APPEAL NO: 11A-UI-11940-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 08/14/11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Wieblers Harley Davidson, Inc. (employer) appealed a representative's September 6, 2011 decision (reference 01) that concluded Tara L. Dixon (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 5, 2011. The claimant participated in the hearing. Michael Rock, attorney at law, appeared on the employer's behalf and presented testimony from two witnesses, Steve Brown ad Bob Wiebler. During the hearing, Employer's Exhibits One through Eight were entered 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 1, 2010. She worked full time as a parts counterworker. Her last day of work was August 12, 2011. The employer discharged her on August 13, 2011. The primary reasons asserted for the discharge was unauthorized absence and falsification of time reports; secondary reasons considered after the discharge were disruptive behavior and inappropriate language.

Earlier in the week the claimant had been having domestic issues with her spouse. She had called in an absence on August 9 to deal with some of those issues, and on August 10 she had come into work but had been so upset that she was ineffective, and so was allowed to leave. Her supervisor, Brown, had advised her at that time to get her personal matters in order, that she needed to be able to work and she needed to follow the employer's policies. She was not scheduled for work on August 11.

The claimant came in for her scheduled work on August 12 at 10:00 a.m. On her way in, she had passed through the mechanics' shop, and had paused to speak to one of the mechanics who had been living in her home, whom she suspected of having an affair with her spouse. She

became somewhat loud and told the mechanic to "stop effing" her spouse. She then went to her work area and began to work. At about 10:30 a.m. she approached Brown and asked if she could leave so that she could move out of her home. Brown agreed but advised her that she needed to stop letting her personal life affect work. The claimant then left, but as she went, she passed the owner's wife and a manager who were outside smoking. She visited with them briefly, explaining that she was upset because she had learned that her spouse and the mechanic were "effing" each other. The employer asserted through second-hand statements that there were customers in the area that could have heard the claimant as well; the claimant denied in her first-hand testimony that there were any customers in the area.

The claimant got on the employer's motorcycle she was allowed to drive and left. A short distance away, the claimant was involved in an auto accident, resulting in her being taken to the hospital. The employer learned of the accident when it was contacted about the damaged motorcycle which had been left at the scene of the accident.

At about 1:30 p.m. the claimant and her parents stopped by the employer's facility; the claimant's mother took in a doctor's note excusing the claimant from work through August 13. As the claimant was waiting outside in the car, about three of her coworkers who were outside on their lunch break came up to the car and visited with the claimant; she again told these coworkers that the accident had happened when she was upset about learning that her spouse and the mechanic were having an affair.

On August 13 the claimant called in later than her scheduled start time primarily to give Brown her new phone number. He then told the claimant she was discharged. He considered the claimant's absence on August 12 to be unexcused because he had allowed her to leave so she could go move, but the accident had occurred about a mile the opposite direction from the employer's facility as the claimant's home. In fact, the claimant had gone the opposite direction because she was going to a leasing company to rent a moving truck so she could move her items from the home. Also, Brown considered the August 13 absence to be unexcused because the claimant had not made personal direct contact with him to report she would be absent due to her injuries in the auto accident, as compared to her mother making the report on August 12. Further, the employer believed that the claimant had not done any work on August 12 for the half-hour she was at work, believing that the claimant had had her conversation with the mechanic after she had started work at 10:00 a.m. However, that conversation had occurred prior to 10:00 a.m.; the employer had no further information that the claimant had not been working in her area from 10:00 a.m. until she asked to leave.

Secondarily, the employer asserted that the claimant had been disruptive and vulgar in the workplace after having been advised to keep her personal matters out of the workplace, specifically by her comments to the owner's wife and the other manager allegedly in front of customers as she was leaving, and her comments to coworkers later that afternoon.

The only formal warning the claimant had received prior to her discharge was a warning on July 17 for an absence due to partying.

REASONING AND CONCLUSIONS OF LAW:

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct.

Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, 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 is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The primary reason cited by the employer for discharging the claimant was her absence from work for stated reasons the employer subsequently questioned. The employer has not established that the stated reasons for the absences were not the true reasons for the absences. Further, as to the claimant not making direct contact for her August 13 absence, under the circumstances of her injury the claimant's reliance on her mother taking in her doctor's note on August 12 was reasonable. The employer's assertions that the claimant had disrupted her coworkers' work by making her comments to them that afternoon fail from the standpoint that the coworkers were not working at the time of the contact. As to the claimant's comments to the owner's wife and the other manager, while one of the more unwise things the claimant did, without it being established that there were in fact customers in the area, under the circumstances of this case, this was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence, or was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's September 6, 2011 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs