IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

NOAH DOLEZAL
Claimant

SCHENKER LOGISTICS INC
Employer

APPEAL NO: 11A-UI-04316-DWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/13/11
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's March 25, 2011 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. The employer responded to the hearing notice, but was not available for the hearing.

The employer returned the administrative law judge's call by contacting the Appeals Section after the hearing had been closed and the claimant had been excused. The employer requested that the hearing be reopened. Based on the employer's request to reopen the hearing, the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUES:

Is there good cause to reopen the hearing?

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

FINDINGS OF FACT:

The claimant started working for the employer as a temporary employee. The employer hired him as a full-time case picker on May 18, 2009. The claimant understood the employer has a progressive discipline policy. He understood employees would not be discharged until they received four written warnings. The claimant also knew the employer did not allow employees to sleep on the job.

During his employment, the claimant received a written warning in July 2010 for taking a short cut in a changing lane. The claimant protested this warning because other employees did the same thing and did not receive a warning.

On February 10, 2011, the claimant reported to work but did not feel well. He asked his supervisor if he could do another job that shift because he did not feel well. The employer did not assign him to another job.

After the claimant retuned from his last break, he put his head on a pallet and fell asleep. The claimant slept for about 20 minutes or until his supervisor tapped him on his shoulder around 5:00 a.m. The claimant's shift ended at 6:00 a.m.

On February 11, 2011, the employer discharged the claimant for sleeping on the job. The claimant asked the employer why was being discharged when he knew another employee, who had been found sleeping at work, had been suspended and demoted. The employer told the claimant they could not talk about another employee's discipline.

The employer responded to the hearing notice before the scheduled hearing, but was not available for the scheduled 8:00 a.m. hearing. The employer did not contact the Appeals Section to participate in the hearing until after the hearing had been closed and the claimant had been excused. The employer requested the hearing be reopened.

The employer explained that the day before employees switched offices and computers. At the time of the hearing, she did not have documents the employer's representative sent to the parties for the hearing because she did not have easy access to her computer. Instead of being available for the hearing and having someone else retrieve the documents, the witness tried to find her computer to retrieve the needed documents. As a result, the witness was not available for the scheduled hearing.

REASONING AND CONCLUSIONS OF LAW:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c).

The employer knew about the scheduled hearing before April 28. The employer's witness used poor judgment when she did not make herself available to participate at the 8:00 a.m. scheduled hearing. A co-worker could have retrieved the documents the employer wanted for the hearing, or a co-worker could have contacted the employer's representative to have the documents sent to the witness again. The employer did not establish good cause to reopen the hearing. Therefore, the employer's request to reopen the hearing is denied.

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).

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 evidence does not indicate the claimant's job was in jeopardy before February 11. When the claimant reported to work to his last shift, he did not feel well and asked for another job. Even though the claimant's supervisor found him sleeping and woke him up about an hour before the end of shift, the facts do not establish that the claimant intentionally planned to fall asleep. Instead, he did not feel well, put his head on the pallet and fell asleep.

While the claimant used poor judgment when he stayed at work instead of seeking permission to go home early because he did not feel well, this isolated incident, falling asleep at work when he did not feel well, does not amount to intentional and substantial disregard of the standard of behavior the employer has a right to expect from a claimant. As of February 13, 2011, the claimant is qualified to receive benefits.

DECISION:

The employer's request to reopen the hearing is denied. The representative's March 25, 2011 determination (reference 01) is reversed. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit work-connected misconduct. As of February 13, 2011 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/pjs