IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

BROOKE R OJA
Claimant

THE GOOSE INC
MOTHER GOOSE DAYCARE & PRESCHOOL
Employer

APPEAL NO. 11A-UI-02419-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/16/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Brooke R. Oja (claimant) appealed a representative's February 16, 2011 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with The Goose, Inc./Mother Goose Daycare & Preschool (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 13, 2011. The claimant participated in the hearing. Shawn Irons appeared on the employer's behalf. 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 April 1, 2009. She worked full-time as a lead teacher in the employer's daycare center. Her last day of work was January 20, 2011. The employer discharged her on that date. The reason asserted for the discharge was allegedly threatening a subordinate.

On January 14, 2011, the claimant made a call to DHS on her cell phone while at work. She called to make an anonymous complaint, supposedly as a parent, to assert that the center was "always out of ratio." On January 18 a visit to the center was made by DHS and the allegation was determined to be unfounded. On January 19 the owner, Ms. Irons, indicated to the claimant that she thought she knew who had made the call, indicating it was someone who was "not going to be there much longer." The claimant inquired whether it was "Heather," an employee who had already given a two-week notice. On January 20 the claimant acknowledged that it was she who had made the call to DHS.

The employer asserted that on January 14, immediately after making the call, the claimant had turned to a subordinate and told the subordinate that if the subordinate reported that the claimant had made the call, she would deny making the call and would then "take [her] down."

The claimant denied making any such statement to the subordinate. The employer believed that the claimant and the subordinate were the only persons present at the time of the call and did not speak to Heather, who the claimant asserted had been present, to verify what might have been said. The employer did not present first-hand testimony of the subordinate who it claimed had reported she had been threatened.

The employer indicated that it was not the making of the call to DHS for which it discharged the claimant, but rather for the making of the alleged threat against the subordinate.

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 that 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 that 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 reason cited by the employer for discharging the claimant is the alleged threat against a subordinate. The claimant denied making any threat toward the subordinate in her first-hand testimony. The employer relies exclusively on the at least second-hand account from the subordinate; however, without that testimony being provided first-hand, the administrative law judge is unable to ascertain whether the subordinate is credible, or whether the employer's witness might have misinterpreted or misunderstood aspects of the subordinate's report. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant in fact made any threatening statement against the subordinate. 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 February 16, 2011 decision (reference 01) is reversed. 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

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