

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW SISCO

Claimant

APPEAL NO: 10A-UI-13838-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PETCO ANIMAL SUPPLIES INC

Employer

OC: 07/25/10

Claimant: Appellant (2)

Section 96.5-2-a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's September 27, 2010 determination (reference 01) that disqualified him from receiving benefits as of August 4, 2010, and held the employer's account exempt from charge because the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits. A telephone hearing was held on November 22, 2010. The claimant participated in the hearing. The employer did not respond to the hearing notice or participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in February 2006. The claimant worked as a full-time assistant manager.

In April 2010, the claimant informed the employer he was going to move to Colorado by late June and asked to be transferred to a store in Colorado. The employer made arrangements for the transfer. The employer replaced the claimant with an employee who wanted to transfer back to Iowa. This employee bought a home sometime before June. In early June, the claimant's plans to move to Colorado changed. As soon as his plans changed, the claimant informed the employer he was not moving to Colorado and asked if he could continue working for the employer. Since the person replacing him had already bought a home, the employer agreed the claimant could stay at the current store, but not as the assistant manager, and the claimant would transfer to a new store in Ames in February. The claimant did not want to transfer, but understood he had a job at least until February 2011.

In mid-July, the claimant sent the store manager a text shortly before he was to work to report. The claimant was unable to work that day because he had an interview. The day after the interview, the claimant reported to work 90 minutes late. While at work, the claimant received a

call from the new assistant manager, his replacement, who asked him to turn in his keys. When the claimant asked why he was being suspended or discharged, the assistant manager indicated he did not know why; he was only the messenger.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if a claimant voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. When the claimant informed the employer he was relocating to Colorado by late June, he effectively submitted his resignation at the store he was working at. When his plans to move to Colorado fell apart, the employer had already replaced his position, but offered the claimant a job at the store he had been working until a new store in Ames opened in February 2011. The claimant did not want to relocate to Ames, but understood he could work for the employer at least until February 2011.

For unemployment insurance purposes, the employer initially accepted the claimant's resignation that he would work until late June. After the claimant's plans to relocate to Colorado changed, the employer effectively allowed him to rescind his resignation. The employer then allowed the claimant to work at the store he had been working until February 2011 and would then transfer the claimant to Ames. Even though the claimant did not want to transfer to Ames, he planned to work until February or transfer to another store closer to his residence before February.

After the employer allowed the claimant to rescind his resignation, the employer then discharged him on July 21, 2010. 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 have had business reasons for discharging the claimant on July 21, 2010. The evidence does not, however, establish that the claimant committed work-connected misconduct. Since the employer did not participate, the facts do not indicate why the employer discharged the claimant. Since the claimant did not commit work-connected misconduct, as of July 25, 2010, he is qualified to receive benefits.

DECISION:

The representative's September 27, 2010 determination (reference 01) is reversed. After the claimant quit to relocate to Colorado, the employer allowed him to rescind his resignation. The employer and claimant then agreed the claimant could work at the same location until a new store in Ames opened in February and then he would transfer to Ames. Even though the claimant did not want to transfer to Ames, he understood he had job until February unless he found other employment before February. On July 21, 2010, the employer discharged the claimant. The employer did not establish that the claimant committed work-connected misconduct. Therefore, as of July 25, 2010, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css