IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ANDREW R DESPLANQUE
Claimant

CARGILL MEAT SOLUTIONS CORP
Employer

APPEAL NO. 11A-UI-00896-SWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/28/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 22, 2010, reference 03, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on February 22, 2011. The parties were properly notified about the hearing. Lynn Desplanque, the claimant's wife, participated on his behalf in the hearing with the claimant's representative, Brian Ulin. No one participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full-time as a production worker from October 2, 2007, to January 8, 2010. His wife also worked for the employer and she developed narcolepsy, a severe sleep disorder triggered by the irregular work hours she was working. The claimant was placed on Family and Medical Leave Act (FMLA) to care for his wife. Even though the claimant was on FMLA, he was required to call in each day if he was unable to work due to his wife's condition.

Sometime in February 2010, there was a day when the claimant's wife, who was subject to sleep-walking episodes, got up in the middle of the night, and shut off the alarms that had been set. As a result, the claimant woke up about two hours after his shift start. He had been told that he was at his limit on attendance points. He knew that he would receive attendance points for calling in after his shift start, which would put him over the limit and he would be discharged. He contacted the union, who confirmed he was terminated. Later, the claimant received notice from the company that he was terminated for being absent without notice.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a. To voluntarily quit means a claimant exercises

a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992). The evidence establishes the claimant did not intent to quit his job and was discharged by the employer for absenteeism.

The next issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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 substantial and 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).

While the employer may have been justified in discharging the claimant under its attendance policy, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated February 22, 2010, reference 03, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw