IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

KARL L BUTLER
Claimant

RESCARE INC
Employer

APPEAL NO: 09A-UI-09951-D

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/07/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Karl L. Butler (claimant)) appealed a representative's July 1, 2009 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with ResCare, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on July 29, 2009. The claimant participated in the hearing and was represented by Eric Updegraff, attorney at law. Ida Newquist 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:

After previously being employed with the employer's predecessor owner, the claimant became an employee of the employer when the employer purchased the business effective November 1, 2007. He worked full time as a counselor in one of the employer's Des Moines group homes for mentally disabled consumers. He typically worked overnight shifts from 12:00 a.m. to 8:00 a.m., but frequently filled in on additional shifts. His last day of work was June 4, 2009. The employer discharged him on June 10, 2009. The reason asserted for the discharge was an incident on the evening of June 4 regarding one of the employer's vehicles.

The claimant had worked from 12:00 a.m. to 8:00 a.m. on June 4, and then had stayed around to informally assist until about 12:00 p.m. He was scheduled to begin working another shift that evening at 4:00 p.m. He was moving out of his apartment that afternoon, and had told the supervisor the prior day that he was moving and so would be somewhat late for the 4:00 p.m. shift.

Another employee had checked out one of the employer's vehicles and met the claimant, as the claimant had been using her car, with the intention of the claimant then being able to drive the vehicle back in to work his shift. The employer had not been apprised of the plan to transfer the

vehicle over to the claimant, although his plan to use to get to work would not have been a concern on its own. The coworker traded off the vehicle to the claimant at approximately 5:00 p.m. The claimant was still working on moving, and so at 6:30 p.m. he called the supervisor to report he was still finishing moving. The supervisor asked if the claimant would prefer the supervisor to simply find someone else to cover the shift, and the claimant agreed. The supervisor called back a few minutes later to ask the claimant to then go ahead and bring the vehicle back in as soon as possible, and the claimant agreed, and indicated the claimant should come in for a discussion the next morning at 9:00 a.m., to which the claimant also agreed. The supervisor did not indicate that there was a need for the vehicle to be returned by a specific time.

The claimant sat down for a rest and fell asleep. He awoke at about 12:00 a.m. and took the vehicle back in. He returned home and went to bed. He then overslept and missed the 9:00 a.m. meeting. He later contacted the employer and arranged a meeting for June 8. Over the weekend the claimant became aware of rumors that were circulating that he had used the company vehicle for inappropriate purposes, including possibly using it to assist in his move and consuming alcohol in it. The claimant arrived early for his meeting with the employer on June 8 because he wanted the employer to do something to stop the rumors. The claimant had not used the vehicle for any inappropriate purpose, and had not used it for any non-work purpose.

The employer was perplexed by why the claimant had not returned the vehicle sooner than he had and why he had missed the June 5 meeting, and indicated the employer did not know if it could keep the claimant on. The employer ultimately decided that it could not keep the claimant employed. The claimant had previously been given a counseling on June 7, 2008 for an incident regarding proper documentation of a consumer's injury, and a warning on February 2, 2009 for attendance.

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 reason cited by the employer for discharging the claimant is his custody of the company vehicle on June 4 and his missing of the meeting on June 5. Under the circumstances of this case, the claimant's failure was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and 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 July 1, 2009 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 he is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs