IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DUSTIN E SWAGEL
Claimant

CARE INITIATIVES
Employer

APPEAL NO. 10A-UI-02153-DT

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 12/27/09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Dustin E. Swagel (claimant) appealed a representative's January 29, 2010 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Care Initiatives (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on March 29, 2010. The claimant participated in the hearing. Attorney Ross Gardner appeared on the employer's behalf and presented testimony from two witnesses, Kellie Jimerson and Michelle Gifford. During the hearing, Employer's Exhibits One through Four were entered into evidence. 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 May 27, 2008. He worked full time as environmental supervisor at the employer's Atlantic, Iowa, long-term care nursing facility. His regular hours were Monday through Friday, 8:00 a.m. to 5:00 p.m., but he was to be on-call as needed. His last day of work was December 29, 2009. The employer discharged him on that date. The stated reason for the discharge was failure to follow policies regarding carrying out his job duties—specifically, not being available for or covering emergency calls relating to his snow removal and maintenance duties.

On March 23, September 9, and November 19, 2009, the employer had given the claimant warnings regarding to carrying out his job duties. On December 21 he was given a further and final warning, which included citing the employer's concern about the claimant's preparation for snowstorms. On December 24 Ms. Jimerson spoke to the claimant directly about concerns regarding the imminent snowstorm, and she reminded him he needed to call her directly if there were any issues about his being able to cover emergency calls related to the snowstorm.

The snowstorm began on the evening of December 24. Out of concern that his home might lose power for an indefinite time, he took his family to the home of his mother about three miles out in the country. There, he became snowbound. As a result, he was not available to clear the sidewalks at the employer's facility and was not available for an emergency call when one of the heaters in the facility went out. The claimant had also lost his phone, so he did not contact Ms. Jimerson. He also had failed to make any backup plans or coverage for anyone else to cover his duties in the event he could not make it back in to work. The employer had previously made arrangements for the claimant to stay in town at a motel in the event of being unable to travel due to weather, but the claimant did not explore that option before taking his family to his mother's home.

As a result of the claimant unavailability to complete his duties and lack of communication after the December 24 snowstorm, in the light of the prior warnings given to him and the specific discussion he had with Ms. Jimerson, the employer discharged the claimant.

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); Iowa Code § 96.5-2-a.

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).

In isolation, the claimant's unavailability to carry out his duties due to being snowed in might not be treated as misconduct. However, prior to this incident, the claimant was on notice that his job was in jeopardy, that he was expected to be prepared to cover the duties that related to snowstorms, and that Ms. Jimerson was specifically concerned about his availability and communications in the context of the snowstorm that was imminent on December 24. While it is not a problem that the claimant made arrangements to move his family out to his mother's home because of the question about losing power, he knew or should have known that he needed to ensure that he made himself available to the employer, or at a minimum, that he needed to have a contingency plan to cover his duties, such as either staying in town at the motel himself after leaving his family at his mother's house, or contacting someone else to cover his duties. Therefore, it is not the claimant becoming snowbound that is misconduct, but the choices he made to stay where he could be snowbound rather that choosing to stay where he would be

available. The claimant's failure to make himself available during an emergency time after multiple prior warnings and a specific concern voiced to him that day shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's January 29, 2010 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of December 29, 2009. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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