IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

STEPHAN A BULLOCK
Claimant

MARKETLINK INC
Employer

APPEAL NO: 12A-UI-07959-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/03/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Stephan A. Bullock (claimant) appealed a representative's June 20, 2012 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Marketlink, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 24, 2012. The claimant participated in the hearing. Amy MacGregor 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?

OUTCOME:

Affirmed. Benefits denied.

FINDINGS OF FACT:

The claimant started working for the employer on March 8, 2011. He worked full time as a telephone sales representative at the employer's telemarketing center. His last day of work was June 4, 2012. The employer discharged him on that date. The stated reason for the discharge was insubordination.

On May 26 two of the claimant's coworkers were having a conversation. One of them made a remark to which the claimant took exception and interjected a remark to the effect of, "that's not necessary." The group's supervisor was nearby and told the group as a whole to "knock it off" and "shut up." The other employees stopped talking, but the claimant took exception to the supervisor's response and felt that the one coworker should be reprimanded for the remark he had made, so he stood up and began arguing with the supervisor. The supervisor approached the claimant physically, and again told him to "shut up and sit down." The claimant felt this was unacceptably disrespectful to him and continued to argue, even though the supervisor again

said, “shut up.” Finally, the supervisor physically pushed the claimant down into his chair, and the situation abated.

The second coworker who had felt that the situation, particularly the supervisor’s actions, were inappropriate, reported the situation to the center manager on June 1, who reported it to the human resources manager, MacGregor. MacGregor did an investigation, which resulted in the discharge of both the supervisor and of 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 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 situation here is similar to instances of physical altercations on the job, which can be misconduct. *Savage v. Employment Appeal Board*, 529 N.W.2d 640 (Iowa App. 1995). A discharge for fighting is disqualifying misconduct unless the claimant shows 1) a failure from fault in bringing on the problem; 2) a necessity to fight back; and 3) an attempt to retreat if reasonable possible. *Savage*, supra. Here, while the supervisor was ultimately the person who made the incident physical, the claimant was not without fault in bringing on the problem, in his continuing to argue after being told to stop and even standing up to further the argument. While the supervisor’s handing of the situation might have been disrespectful to the claimant, there was no necessity for the claimant to argue back; he could have “retreated” by sitting down and stopping arguing and could have then later reported his concerns regarding the supervisor’s conduct as did his coworker. The claimant's involvement in the argument and dispute with the supervisor 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 June 20, 2012 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of June 4, 2012. 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

ld/pjs