IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 05A-UI-04273-DWT
OC: 03/13/05 R: 03
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Randall P. Hawley (claimant) appealed a representative's April 13, 2005 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Wal-Mart Stores, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 13, 2005. The claimant participated in the hearing with his attorney, E. J. Gallagher III. Deb Johnson, a subpoenaed witness, and Dennis Iverson appeared as witnesses for the claimant. Jackie Wiegand, a representative with TALX appeared on the employer's behalf. Cody Benge, Melinda Larson, Jean Dawson and Bryon Johnson appeared on the employer's behalf. During the hearing, Claimant's Exhibit A was offered and admitted as 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 16, 2003. The claimant worked as a full-time overnight maintenance associate. Benge was one of the claimant's supervisors.

The claimant was not scheduled to work third shift on March 11-12, but he worked this shift. The claimant had work restrictions, which the employer accommodated. The employer knew the claimant took prescribed medication for the back pain he experienced. The claimant's doctor recently prescribed a new medication for the claimant. When the claimant took the medication he became more easily agitated.

The claimant had recently asked the employer if he could have Sundays off for religious purposes. The employer believed this issue had been resolved and the claimant agreed he would not be scheduled on Sunday, but would have two other days off as well. After the claimant reviewed the employer's policy, he concluded the schedule he had initially accepted violated the employer's policy by reducing his weekly hours because he asked not be scheduled on Sundays for religious reasons. During the third shift on March 12, the claimant told Benge that he did not agree with the employer's new schedule. Benge decided Johnson was the person who needed to address this issue and told the claimant he needed to talk to Johnson about this issue.

The claimant was in the personnel office trying to help a co-worker use a computer when Benge came in to talk to another employee, M.R. While there, the claimant asked Benge to read the employer's policy on the computer concerning time off on Sundays for religious reasons. Benge again told the claimant he needed to talk to Johnson. As Benge left the room, he heard the claimant say something in a voice Benge considered too loud. Benge told the claimant to stop and be quiet. Communication between the claimant and Benge broke down at this point. While the claimant may have told Benge he was trying to help another employee with computer work, Benge concluded the claimant was upset that Benge would not address the issues with his work schedule. Benge ultimately told the claimant to come into his office because the claimant was being disrespectful to Benge. When this occurred, the claimant became upset and agitated because he did not understand what he had done.

The claimant went to the Benge's office and Benge asked Dawson to witness a verbal counseling he was going to give to the claimant. Benge denied the claimant's request to have his own witness in the room. Dawson closed the office door when she came in. While Benge typed up the verbal counseling report on a computer, the claimant talked about how the employer discriminated against him and treated him unfairly. There were times the claimant appeared very agitated and other times he appeared to calm down. When the claimant got up from his chair that was located behind Benge, he asked Benge to put the claimant's comments on the verbally counseling form. The claimant made a motion with his arm and tapped on the computer monitor when he asked about putting his own comment on the typed form. Benge did not allow the claimant to add anything because he was only giving him a verbal warning, which the claimant did not even have to sign. After Benge completed the form, he asked the claimant if he wanted to stay and work or go home. The claimant indicated he would go home since he was not even scheduled to work. Dawson did not find the claimant's action on March 12 any more threatening than when the claimant had become upset with Dawson or another female employee. (Claimant's Exhibit A.)

When the claimant left Benge's office, he was upset and told Benge he would talk to Johnson and contact his lawyer. The claimant also made a comment that he was on new medication. While the claimant talked loudly as he left Benge's office and was still agitated and upset, he became calmer as he walked toward the front door.

When Johnson came to work the next day, the claimant was waiting to talk to him. Benge, Dawson, and Larson had written reports about the incident involving the claimant prepared for Johnson's review. The claimant acknowledged to Johnson that he had been upset, agitated and may have gotten out of control during his encounter with Benge. The claimant told Johnson about the new medication he was on. When the claimant told his doctor about the incident the following Monday, the claimant's doctor told the claimant to stop taking the medication. The employer suspended the claimant from work on March 12.

The employer knew the claimant had been loud in the past, but no one before reported feeling threatened by the claimant. On March 14, 2005, Johnson discharged the claimant because he concluded the claimant violated the employer's workplace violence policy because his conduct on March 12 threatened employees.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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).

First, the employer established business reasons for discharging the claimant. Based on the reports from managers, Johnson concluded the claimant violated the employer's workplace violence policy in the way he reacted toward Benge the morning of March 12, 2005. While the employer has the right to discharge the claimant, the evidence does not support the employer's conclusion that the claimant threatened another employee(s).

The primary witnesses testified they felt threatened while the claimant was in Benge's office. However, Dawson was surprised that the employer discharged the claimant. Since the claimant had been talked to about talking loudly prior to March 12, it is understandable why Dawson was surprised the claimant was discharged. Dawson's surprise at the claimant's discharge does not make sense if she really felt the claimant had threatened Benge. In her written statement, Dawson indicated the claimant had not acted any differently toward Benge then he had when he became upset with her or another female employee. There is no evidence Dawson said anything to the claimant when he got out of his chair or that she opened Benge's office door at anytime.

Benge's testimony that he felt threatened is somewhat suspicious when he gave the claimant the opportunity to go home or stay at work. If Benge truly felt threatened, there is no logical explanation for giving the claimant the opportunity to continue working until the end of that shift. Larson's

testimony that she felt threatened is not credible because she was about 75 feet away when she heard the claimant speak in a raised voice. While Larson was undoubtedly concerned about the commotion she heard, the evidence does not support her assertion that the claimant threatened her. The evidence does not support the employer's conclusion that the claimant actions on March 12 threatened another employee or violated the workplace violence policy.

The facts show the claimant was upset, frustrated and agitated after Benge called him into his office for being disrespectful. Benge only gave the claimant a verbal counseling even though the claimant accused the employer of discrimination and threatened to contact his attorney. The evidence suggests that initially there was miscommunication between the claimant and Benge. Both men jumped to incorrect conclusions about the other person. While Benge remained quiet when he inputted the verbal counseling documentation into his computer, the claimant released his frustration by talking loudly and making comments about how the employer discriminated against him and did not treat him fairly. Even though the employer previously talked to the claimant about not talking so loudly or to remain calm, Dawson did not find the claimant's action on March 12 any more threatening than when the claimant had become upset with Dawson or another female employee. Also, the facts show the claimant's job was not in jeopardy prior to March 12.

The fact the claimant's doctor took him off this new medication is a factor that must be considered and may been a factor in the March 12 incident. Benge was obviously frustrated when the claimant kept talking about how the employer violated its policy in connection to employees asking for Sunday off for religious purposes. While the claimant's verbal comments and talking in a raised voice is not condoned, it is understandable when a person is frustrated and upset. The claimant was not a "perfect" employee, but the evidence does not establish that he intentionally and substantially violated the standard of behavior the employer has a right to expect from an employee. The facts do not establish that the claimant committed work-connected misconduct. Therefore, as of March 13, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's April 13, 2005 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of March 13, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/sc