IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

CARL E RUSH
Claimant

QWEST CORPORATION
Employer

APPEAL NO. 09A-UI-08919-DT

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 05/10/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Qwest Corporation (employer) appealed a representative's June 11, 2009 decision (reference 01) that concluded Carl E. Rush (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 8, 2009. The claimant participated in the hearing. Larry Lampel of Barnett Associates appeared on the employer's behalf and presented testimony from two other witnesses, Ann Rodriguez and Terry Hannam. 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 March 23, 2005. He worked full time as a telesales manager in the employer's Des Moines, Iowa, call center. His last day of work was May 12, 2009. The employer discharged him on that date. The reason asserted for the discharge was conduct in violation of a conflict of interest policy and misrepresentation during the investigation.

The claimant was being given an award for high performance; this award involved a trip to Florida for himself and a guest to be presented with the award. The claimant's wife could not go. Another telesales manager indicated an interest in going with the claimant. The two discussed how there could be a tax consequence if the claimant allowed someone other than his wife to use the ticket, as the two had both observed something similar occur in the past. The fellow telesales manager volunteered to pay the claimant in excess of $200.00 to cover the anticipated tax consequences. The claimant ended up exiting the plane due to a panic attack before the plane took off, and so he did not make the trip. The employer learned the claimant had made the money arrangement with the fellow telesales manager when the other telesales manager returned from the trip and complained how uncomfortable it had been to go without the claimant and that he had ended up with expenses due to the claimant's luggage still making the

trip. Even if the claimant's and the fellow telesales manager's belief regarding the tax consequences of transferring the trip were incorrect, the employer was unable to demonstrate how the lateral sales manager's voluntary payment to the claimant was clearly in violation of an unambiguous conflict of interest policy.

Prior to the trip, a subordinate of the claimant had also expressed interest in accompanying the claimant on the trip. The claimant had responded by telling the subordinate to come and speak with him about, but after consultation with other managers had concluded that if he did give the trip to a subordinate, it would be a conflict of interest, the claimant had not pursued the matter with the subordinate. The employer believed the claimant had misrepresented the matter during the investigation by indicating that he had not solicited or asked subordinates to go on the trip, but in fact the claimant did not solicit subordinates but had only given an initial response to a subordinate who had instigated contact on the question.

Prior to the trip, the claimant had discussion with another subordinate about a $50.00 credit the claimant wanted to use but could not use on the award debit card he had. The subordinate had a $50.00 credit on her award debit card. The two discussed the claimant using the subordinate's credit and in exchange the claimant would give the subordinate his card, which would have a $100.00 on it so she could use it shopping in Florida. Ultimately, the subordinate simply gave the claimant $50.00, even though he had not asked for it in cash. When the claimant ended up not going on the trip to Florida, he was unable to give the subordinate his award debit card, and she then complained to the employer that the claimant had borrowed money from her and not paid it back. He did pay her back on April 28 after she returned from the trip.

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 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).

The reason cited by the employer for discharging the claimant were the tangential issues related to the award trip the claimant ended up not taking. While the most apparent conflict was accepting anything of value from a subordinate, the employer has not established that the claimant's conduct was substantial misbehavior, as compared to inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, or a good-faith error in judgment or discretion. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Under the circumstances of this case, the claimant's handling of the situation was at worst the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence, or 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 June 11, 2009 decision (reference 01) is affirmed. 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

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