IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

THOMAS E RAMIREZ
Claimant

US POSTAL SERVICE
Employer

APPEAL NO. 10A-UCFE-00049-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09/26/10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(9) – Suspension or Disciplinary Layoff

STATEMENT OF THE CASE:

U.S. Postal Service (employer) appealed a representative's November 10, 2010 decision (reference 01) that concluded Thomas E. Ramirez (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 7, 2011. The claimant participated in the hearing and was represented by Cindy Miller, union representative. Angie Pettinger appeared on the employer's behalf and presented testimony from one witness, Rick Smith. 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 or suspended for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 24, 1998. He worked full-time as a processing clerk in the employer's Des Moines, Iowa, distribution center. On September 18, 2010, he was suspended for disciplinary reasons; he was reinstated to employment on December 21. The reason asserted for the suspension was the claimant took leave under false pretenses on August 4.

The claimant has an underlying medical condition, depression, for which he is authorized to take intermittent FMLA (Family Medical Leave). On August 4 the claimant called in shortly before the start of his scheduled shift at 6:00 p.m. to report that he was taking a day of absence under the FMLA. On that day, "shortly" after the claimant's call-in, although the precise time is not known, there was an anonymous report to the employer's inspection service indicating that the claimant was seen at a local racetrack/casino.

The employer's inspection service did not begin an investigation until August 24. On August 25 a state DCI (Division of Criminal Investigation) officer interviewed the claimant regarding whether he had been at the casino on August 4, but the interview was under the pretense that

the officer believed that someone might have made an unauthorized automatic teller withdrawal with the claimant's bank card at the casino that day. The claimant was not informed that he was under investigation for misreporting his absence that day until September 2, when he was interviewed by postal inspection officers.

The claimant acknowledged that he had gone to the casino on August 4 after calling in the absence. He indicated that prior to leaving his home he had an argument with his wife, aggravating his medical condition, and that since he currently did not have any of his prescribed medication, he went to the casino to drink as a form of self-medication. He was at the casino for a relatively brief time, as his wife located him and persuaded him to leave.

As a result of the employer's conclusion that the claimant had made a false claim for leave, the employer suspended the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has suspended or 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 suspended or discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a. For purposes of unemployment insurance eligibility, a suspension is treated as a temporary discharge and the same issue of misconduct must be resolved. 871 IAC 24.32(9).

In order to establish misconduct such as to disqualify an 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 August 4 absence cannot be relied upon to establish a current act of misconduct as required to establish work-connected misconduct. 871 IAC 24.32(8); Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988). This incident question occurred over a month prior to the employer's suspension of the claimant, and nearly a month before the claimant was even informed of the investigation. The postal inspectors, agents of the employer, were involved and aware of the incident the same day of the incident.

Further, while it "looks bad" for a person who has called in an absence to then go to a casino, there is no concrete requirement that a person who has called in sick essentially remain home sick or in bed. While his presence at the casino might provide "reasonable suspicion" that the claimed illness was false, the claimant's explanation of how he could both call in an absence for

illness and be well enough to go to the casino is at least plausible, and the employer has not provided any evidence to establish by a preponderance of the evidence that the scenario as set out by the claimant was incorrect.

Therefore, even if the event leading to his suspension was a “current act” for which misconduct could be considered, under the circumstances of this case, the claimant’s going to the casino after calling in the absence 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 November 10, 2010 decision (reference 01) is affirmed. The employer discharged or suspended 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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