IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JAMES B MORRISON
Claimant

HY-VEE INC
Employer

APPEAL NO. 09A-UI-17482-DWT

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 10/18/09
Claimant: Respondent (1/R)

Section 96.5-2- a - Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's November 12, 2009 decision (reference 01) that concluded the claimant was qualified to receive benefits, and held the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. A telephone hearing was held on December 28, 2009. The claimant participated in the hearing. Tim Speir, a representative with Unemployment Insurance Services, appeared on the employer's behalf. Ginny Ward, the store director; Scott Gaskill, the manager of store operations; and Bonny Hodge appeared on the employer's behalf. During the hearing, Employer Exhibits One, Two, Three, Four and Claimant Exhibit A were 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 April 21, 2008. The claimant worked as a full-time assistant manager. The employer's attendance policy informs employees that if an employee is unable to work for more than one day, daily contact is required unless approved by a supervisor. (Employer Exhibit Three.)

On January 16, 2009, the claimant received a written warning when he overslept. He was scheduled to open the store at 4:30 a .m. and he did not arrive at work until 7:45 a.m. When the claimant woke up at 7:00 a.m., he immediately notified the employer. (Employer Exhibit One.) On August 24, the claimant received a written consultation form for reporting to work nine minutes later after the employer had just talked to him about the importance of reporting to work on time. (Employer Exhibit Two.)

The claimant had problems with his neck and was on a medical leave of absence September 24 through October 9, 2009. The claimant was scheduled to return to work on October 11, 2009. Just before the claimant was to return to work, he was in an automobile accident. He rolled his

vehicle and reinjured his neck. The claimant notified the employer on October 11 he was unable to work because he did not have transportation to get to work after he rolled his vehicle.

On October 12, a neighbor drove the claimant to the store. The employer told the claimant that if he did not report to work as scheduled at 2:00 p.m. that day, his absence would be unexcused unless had had a doctor's excuse. The claimant informed the employer he had a doctor's appointment the next day.

On October 13, Gaskill told the claimant that the employer needed a faxed copy of his doctor's statement that day no later than 5:00 p.m. This was not a problem, because the claimant had a doctor's appointment that afternoon. After the appointment, the claimant saw the doctor's nurse fax the doctor's statement excusing the claimant from work as of October 13, 2009. When the claimant called the employer after the doctor's statement had been faxed, Gaskill told the claimant he had not received the fax. This was shortly before 5:00 p.m. The claimant then asked the nurse if the fax she sent the employer had gone through and she assured the claimant she had received confirmation that the fax had been successfully transmitted. (Claimant Exhibit A.) Since the claimant assumed the doctor's statement covered his absence as of October 13 and 14, he did not call the employer or report work on October 14.

On October 15, the claimant was not scheduled to work but he went to the store. When Gaskill saw the claimant, he told him that he never received the faxed doctor's statement and that morning Ward had discharged the claimant because he had three unexcused absences - on October 11, 12, 13, and 14. Although the claimant told Gaskill he had a copy of his doctor's restrictions in his car, Gaskill indicated the decision to discharge the claimant had already been made.

The claimant established a claim for benefits during the week of October 18, 2009.

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).

The employer established business reasons for discharging the claimant. Although the claimant may have had an attendance issue earlier, the employer did not discharge him for reporting to

work late. Instead, the employer discharged him because the employer considered the claimant to have three unexcused absences. Even if the claimant's absences on October 11, 12, 13, and 14 are unexcused, he did not intentionally fail to report to work as scheduled and he timely advised the employer that he was unable to work these days. The claimant did not plan to have an accident where his vehicle rolled and he reinjured his neck. Even though Gaskill did not receive a faxed copy of the doctor's October 13 statement restricting the clamant from work as of October 13, it does not change the fact that the claimant was restricted from working. The facts do not establish that the claimant committed work-connected misconduct. Therefore, as of October 18, 2009, the clamant is qualified to receive benefits based on the reasons for his employment separation.

Since the claimant was restricted from working as of October 13, 2009, the issue of when his physician released him to return to work is remanded to the Claims Section to determine.

DECISION:

The representative's November 12, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of October 18, 2009, the claimant is qualified to receive benefits, based on the reasons for his employment separation. The employer's account may be charged for benefits paid to the claimant. Since the claimant was restricted from working as of October 13, the issue of when the claimant was able to and available for work is Remanded to the Claims Section to determine.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw