IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

CHRISTOPHER A STREETER
Claimant

DAVID BEAR INC
Employer

APPEAL NO: 10A-UI-16270-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/24/10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

David Bear, Inc. (employer) appealed a representative's November 22, 2010 decision (reference 01) that concluded Christopher A. Streeter (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 January 13, 2011. The claimant participated in the hearing. Mike Verdon appeared on the employer's behalf. During the hearing, Employer's Exhibits One and Two were entered into 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

After a prior period of employment with the employer's predecessor owner, the claimant started working for the employer when the employer took over the business on March 16, 2009. He worked full time as a salaried project manager in the employer's Urbandale, Iowa construction component business. His last day of work was October 29, 2010. The employer discharged him on that day. The reason asserted for the discharge was falsifying his time record.

The claimant was to work 40 hours per week, although he was allowed flexibility. He was to fill out a generic time sheet weekly. He turned in a time sheet for the week ending October 15. On about October 25 the employer's part-time office manager, the only employee who had been in the office with the claimant the week ending October 15, reported to the claimant's immediate supervisor that she believed the claimant had falsified his time report for that week. Specifically, she reported there had been a day he had not come into work until after 9:00 a.m., a day where he had gone for lunch and not returned, a day he had not come in until after lunch, and a day where he had watched a movie "all day." The employer concluded these allegations were true and that the claimant had falsified his time record, and so discharged the claimant.

The claimant asserted that there were days, including at least one day that week, when he was into the office by about 7:45 a.m. as reflected on his time report, but had then left and shut up the office before the office manager arrived for her scheduled work at 9:00 a.m. because he had work-related errands to run, so that when the office manager arrived for work, she may have incorrectly assumed that the claimant had not yet reported for work. The employer discounts this explanation as the employer could locate no expense reports showing the claimant submitted any requests for reimbursement for expenses for any travel that week. The administrative law judge cannot assume that all work-related errands would of necessity result in reimbursable expenses, and cannot conclude that the absence of an expense report for a day during the week in question establishes that there were no work-related errands run by the claimant.

The claimant acknowledged there was a day that week in which he was having car problems and so did not return to the office by the time the office manager left at her regular end time of 3:00 p.m. He asserts, however, that he did return shortly after that time and worked until about 4:45 p.m. He acknowledges that he did not reflect this extended lunch on his time record and that this was admittedly an error. He offers as explanation that he did not complete the time record until the end of the week and so neglected to recall and report the extended lunch break, as well as the fact that he also did not report time he spent on work projects while he was at home.

The claimant admitted that there was a day that week he did not report in for work until midday due to his car problems. However, the claimant's time report for that day does in fact reflect that he did not come into the office until 4:45 p.m.

Finally, the claimant conceded that there was a day that week where he came back to the office after lunch with a children's movie on DVD, and that he watched it in his office for a period of time. However, while he admits he did not have a good reason for watching any of the movie in the office, he only spent about 15 minutes watching the movie.

The claimant had not received any prior formal discipline from the employer. The employer's decision to discharge the claimant was influenced by the report of the office manager that the claimant had on October 15 come in late again, apologized for not calling, and had stated that "I don't care though, that the Company took 10% of my wages so I'm going to take what I can when I can from them." The claimant denied making this statement or any statement to that effect.

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 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 reason cited by the employer for discharging the claimant is the falsification of his time record for the week ending October 15. The employer relies exclusively on the second-hand account from the office manager; however, while a written statement from that office manager was provided, it is still hearsay, and without that information being provided first-hand, the administrative law judge is unable to ascertain whether the office manager might have been mistaken, whether she actually observed the entire time, or whether she is credible. The administrative law judge notes that there are details set out in the office manager's statement which differ from the particulars of what the employer's president, Mr. Verdon, indicated she had reported at the time of the initial concern in October, such as which event supposedly occurred on which day of the week in question. Assessing the credibility of the witnesses and reliability of the evidence, the administrative law judge concludes that the claimant's first hand testimony is more credible.

The claimant concedes that he did make at least one error on the time record in not reflecting an extended lunch on one day, and admits that he did not properly use some time he spent watching the children's movie. However, he had some reason to believe that the time record was for general time reporting with some flexibility, and not used as a strict accounting of each minute he spent working. Under the circumstances of this case, the claimant's error in reporting his extended lunch that week and his using about 15 minutes in the office watching the children's movie 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 22, 2010 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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