IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

KYLE M WELBOURNE
Claimant

TM1 STOP LLC
Employer

APPEAL NO: 09A-UI-07708-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/19/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

TM1 Stop, L.L.C. (employer)) appealed a representative's May 14, 2009 decision (reference 01) that concluded Kyle M. Welbourne (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 June 12, 2009. The claimant participated in the hearing and presented testimony from one other witness, Earl Pope. Heather Hoyt appeared on the employer's behalf and presented testimony from one other witness, Travis Eichelberger. 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 August 27, 2007. He worked full time as a telephone sales associate in the employer's outsourcing call center. His last day of work was April 15, 2009. The employer suspended him on that date and discharged him on April 17, 2009. The reason asserted by the employer for the discharge was insubordination.

The claimant had been given a written warning o February 6, 2009 after making a somewhat snide comment about being warned about making a statement in sales calls, where the instruction regarding making the statement was only given after he had already had the sales call. On March 12 he was given a second written (final) warning for making a comment to coworkers about how something the client was doing seemed unethical.

On April 15 the claimant had called his supervisor prior to the start of his shift, indicating he was not feeling well, but would try to come in later as he knew he was needed. The claimant arrived at work at approximately 1:00 p.m. The employer asserted that the claimant had exhibited a negative and unprofessional attitude toward the supervisor, and that when the supervisor sought to address the claimant's attendance, the claimant had responded defiantly, indicated

that he would do what he wanted. However, the claimant and Mr. Pope, a coworker who had ridden to work with the claimant, indicated that there was virtually no discussion between the claimant and the supervisor, but that the supervisor simply indicated that Mr. Eichelberger, the senior operations manager, needed to see him, so the claimant went to see Mr. Eichelberger, where he was suspended. The claimant credibly testified that at no time did he make any of the kinds of statements to the supervisor as asserted by the employer.

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 insubordination toward his supervisor on April 15. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant was insubordinate toward his supervisor that day. The employer relies exclusively on the second-hand account from the supervisor through Mr. Eichelberger; however, without that information being provided first-hand, the administrative law judge is unable to ascertain whether the supervisor is credible or whether Mr. Eichelberger might have misinterpreted or misunderstood aspects of the report. The administrative law judge concludes the claimant's first-hand testimony is more credible. 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 May 14, 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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