

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

IRA L HATCHER
Claimant

APPEAL NO: 14A-UI-00448-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STONEHILL CARE CENTER
Employer

OC: 04/28/13

Claimant: Respondent (1)

Section 96.5-2-a – Discharge
Section 96.7-2-a(2) – Charges Against Employer’s Account

STATEMENT OF THE CASE:

Stonehill Care Center (employer) appealed a representative’s January 9, 2014 decision (reference 03) that concluded Ira L. Hatcher (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 February 4, 2014. The claimant participated in the hearing. Beth Schmitt appeared on the employer’s behalf and presented testimony from one other witness, Kathy Selle. 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.

ISSUES:

Was the claimant discharged for work-connected misconduct? Is the employer’s account subject to charge?

OUTCOME:

Affirmed. Benefits allowed. Employer’s account not subject to charge in current benefit year.

FINDINGS OF FACT:

The claimant started working for the employer on June 18, 2013. He worked full time as a morning homemaker in the employer’s long-term and skilled care nursing facility. His last day of work was December 17, 2013. The employer discharged him on that date. The reason asserted for the discharge was violation of the employer’s zero tolerance workplace violence policy.

On the morning of December 17 the claimant had gone into the kitchen to get some trays of food. While there he had made something of a mess, and had not immediately cleaned it up, but went about other duties, intending on cleaning up the mess before he left. A cook in the kitchen confronted the claimant and the two began yelling at each other, with the cook generically complaining about the messes that all the homemakers made and did not clean up

after themselves. The food service director, Selle, came out to break up the argument. She had the claimant follow her back to her office, which he did. She told him to calm down, but he continued to speak loudly for at least a period of time. After about ten minutes, he asked if they were done; when she said they were, he left. She later reported the incident to Schmitt, the director of human resources. As a result of the employer's conclusion that the claimant had violated the workplace violence policy, the employer discharged the claimant.

The claimant established an unemployment insurance benefit year effective April 28, 2013. He reactivated the claim by filing an additional claim effective December 15, 2013.

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 his confrontation with the cook and later conversation with Selle on December 17, asserting that it amounted to a violation of the workplace violence policy. There was no actual physical violence, and the only verbal or physical "threats" of violence that were asserted by the employer was the claimant had told the cook "bring it on" and that he had shook his finger at Selle while standing about two feet away from her. The claimant denied both of these allegations, but even if he had, while it might have been deserving of some other level of discipline, the conduct does not rise to the level of being a violation of a workplace violence policy. The employer has not established that the claimant's behavior 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). 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.

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code § 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code § 96.19-3. The claimant's base period began January 1, 2012 and ended December 31, 2012. The employer did not employ the claimant during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

DECISION:

The representative's January 9, 2014 decision (reference 03) 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. The employer's account is not subject to charge in the current benefit year.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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