IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

HEATHER L BONORDEN
Claimant

THE CBE GROUP INC
Employer

APPEAL NO: 07A-UI-03342-DWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/25/07 R: 03
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Heather L. Bonorden (claimant) appealed a representative's March 20, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of The CBE Group, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 17, 2007. The claimant participated in the hearing. Mandy Bass, the manager, testified on the employer's behalf. Stephanie Weatherell and Mike Paquette were present and available to testify. 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 February 7, 2005. The claimant worked as a full-time collector. The employer's policy informs employees the employer may discharge them if they receive three written warnings in 12 months. The employer's policy also indicates employees are not allowed to sleep while on the clock. During her employment, the claimant observed employees sleep during a paid break without any consequence. The office has a couch where employees lay down.

On September 14, 2006. The employer gave the claimant a written warning for failing to properly notify the employer when she unable to work as scheduled. On October 19, the employer gave the claimant a second written warning. The employer gave the claimant this warning for failing to notify the employer she would be late for work.

In early December 2006, Weatherell became the claimant's supervisor. Although Weatherell did not give the claimant any written warnings, she gave the claimant a number of verbal warnings for punching in early from a break and then going to the restroom or not going back to her desk right away to work.

On February 20, 2007, the claimant punched out when she went on a paid 15-minute break. The claimant's previous supervisor heard the claimant make a remark that she was going to rest her eyes. The claimant understood her former supervisor indicated this was not a problem and she would make sure the claimant punched back in on time. The claimant remained at her desk with her eyes closed. At the end of her break or somewhat past her break, Weatherell, Bass and Brandt saw the claimant. These people all concluded the claimant was sleeping at work. The employer gave her a written warning for this on February 20, 2007. The employer warned the claimant on February 20 that the employer would be watching her because her job was in jeopardy.

On February 21, 2007, the employer discharged the claimant. After reviewing the claimant's personnel file, the employer decided to discharge her.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code section 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).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

Based on the employer's policy that an employee will be discharged if they receive three written warnings in 12 months, the employer established business reasons for discharging the claimant. The employer acknowledged that if the claimant had not had two previous warnings, the employer would not have discharged her for the February 20 incident. February 20 was the first time anyone said anything to the claimant about closing her eyes or sleeping at work. Based on the claimant's perception that the employer did not object to employees closing their eyes, resting or sleeping during a paid 15-miutes break, a preponderance of the evidence does not establish that the claimant intentionally disregarded the employer's interests. The claimant did not commit work-connected misconduct. The claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's March 20, 2007 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of February 25, 2007, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs