IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

TYLER J DANIELS
Claimant

CALERIS INC
Employer

APPEAL NO: 12A-UI-08091-DW

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/10/12
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's June 27, 2012 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing with Susan Daniels as a witness. The employer did not appear for the in-person hearing in Des Moines.

The employer called the Appeals Section at 10:15 a.m. to participate in a phone hearing. The employer made a request to reopen the hearing. Based on the employer's request to reopen the hearing, the evidence, the parties' arguments, and the law, the administrative law judge denies the employer's request to reopen the hearing and finds the claimant qualified to receive benefits.

ISSUES:

Did the employer establish good cause to reopen the hearing?

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 18, 2011. The employer promoted him to a full time manager by April 2012.

Before the claimant became a manager, he became friends with some of his co-workers and socialized with them outside of work. When J. P. started, she encouraged the claimant to date her daughter. He went out with J.P.'s daughter once. The claimant knows the employer has an anti-harassment policy. He does not know of any policy that prohibits co-workers from socializing outside the work place.

As a manager, the claimant supervised 65 employees, 50 of them women. On a daily basis he talked to and warned his employees about the employer's strict attendance policy. A co-worker, who the claimant supervised, and the claimant had a disagreement. The argument was carried

out by text messages. Even though the claimant had a disagreement with this co-worker, they sent text messages during off work hours. In late May or early June, J.P. showed the claimant a picture of a half-nude employee on her phone and told him a story about the picture. The claimant warned J.P. that if she showed inappropriate pictures at work again or had her cell phone out during work hours again, he would have to give her a written warning. In late May or early June, a female employee complained about the fact she had received a speeding ticket when a male co-worker had not. The claimant jokingly told her that she needed to work on her flirting skills. The female employee did not appear offended by this comment. During his employment none of his friends or co-workers told the claimant that any of his comments were inappropriate.

On April 4, 2012, J.P. reported that she had been present and witnessed the claimant make inappropriate comments to and about female employees he supervised. J.P. also reported that female employees had received inappropriate text messages from the claimant and they were intimidated and afraid to report any problems to the employer.

The claimant understood the employer talked to the female employees J.P. identified before the employer talked to him. The claimant does not know who made complaints against him or what he reportedly said verbally in text messages that were offensive to anyone. The claimant had no idea anyone felt he created a hostile work environment. The employer did not share the details of the complaints with the claimant. On June 10, 2012, the employer discharged the claimant for creating a hostile work environment for several female employees he supervised.

The employer did not appear for the in-person hearing in Des Moines on August 16. Even though the employer received the hearing notice before the scheduled hearing, the people participating at the hearing assumed the hearing was by phone, not in-person. The hearing notice stated the location of the hearing was at 150 Des Moines #103, Des Moines IA on August 16 at 9:45 a.m. The employer called the Appeals Section at 10:18 a.m. to participate in a phone hearing. By the time the employer called, the hearing had been closed and the claimant had been excused. When the administrative law judge talked to the employer later, the employer asked that the hearing be reopened.

REASONING AND CONCLUSIONS OF LAW:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c). Since the employer received the hearing notice and failed to notice the hearing was in-person instead of by telephone, the employer's failure to read the hearing notice does not establish good cause to reopen the hearing. Also, even though the witnesses may have been told by another employee the hearing was by phone, the employer received the hearing notice before the scheduled hearing. The employer's request to reopen the hearing is denied.

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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer may have had justifiable business reasons for discharging the claimant. The employer's general allegation that the claimant created a hostile work environment and made inappropriate comments to and about women does not establish that the claimant committed work-connected misconduct. Without specific details, the employer did not establish that the claimant intentionally disregarded the employer's interests or violated the employer's anti-harassment policy.

After the claimant was discharged, the employer provided information for the appeal hearing that employees reported he made comments to employees about helping the hot or sexy girl. The claimant denied at the hearing, making such comments. The evidence does not establish that the clamant committed work-connected misconduct. As of June 10, 2012, the claimant is qualified to receive benefits.

DECISION:

The employer's request to reopen the hearing is denied. The representative's June 27, 2012 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the evidence does not establish that the claimant committed work-connected misconduct. As of June 10, 2012, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs