IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

RANDALL E INNIS
Claimant

US FOODSERVICE INC
Employer

APPEAL NO. 08A-UI-00818-DWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/23/07 R: 02
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

U. S. Foodservice, Inc. (employer) appealed a representative's January 14, 2008 decision (reference 01) that concluded Randall E. Innis (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 25, 2008. The claimant participated in the hearing. Linda Lough, Carileta Harty and Marc Jensen appeared on the employer's behalf. 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 August 15, 2005. The claimant worked as a full-time delivery driver in the Des Moines area. Jenson supervised the claimant.

As a result of Christmas falling on Tuesday, in late November the employer informed all drivers that if they usually made deliveries on Monday, it would be mandatory for them to work on Sunday, December 23. The employer scheduled drivers to work on Sunday and Monday, so drivers had December 25, Christmas, off from work.

On December 18, the claimant and Jensen talked about the Sunday, December 23 schedule. The claimant initially indicated he would not work on Sunday. Another driver, R.G., was on vacation the week of December 16 and told the employer he would not work on Sunday, December 23. Ultimately, a supervisor took R.G.'s Sunday route because the employer understood R.G. could not get back from his vacation in time to do the Sunday route. After Jensen reminded the claimant that it was mandatory for all drivers to work, he had not requested time off and that he was on the schedule, the claimant told Jensen he would work as scheduled on Sunday, December 23.

On December 21, the scheduler contacted Jensen to report that the claimant indicated he was not going to work on Sunday, had said he was going to call in sick and had crossed his name off the schedule. Jensen then contacted Harty who in turn talked to the claimant. When Harty talked to the claimant he told her he had already talked to Jensen and told him he would be at work on Sunday. Harty reminded the claimant that if he did not work as scheduled on Sunday, the employer would consider that as a refusal and the claimant would not have a job. After Harty talked to the claimant, Jensen also talked to the claimant to let him know that Harty was serious.

On Saturday evening, the claimant tried to contact Jensen on his cell phone. The claimant did not talk to Jensen on Saturday night or Sunday. The claimant talked to another supervisor on Saturday night and told him he was ill and unable to work on Sunday. The claimant had diarrhea. After Jensen learned the claimant did not work on Sunday, he contacted him and suspended him.

The claimant talked to Lough on Monday morning to complain that the employer discriminated against him by suspending him for calling in sick. Lough indicated it was hard to believe he had been sick when the employer received reports he had told other employees on Friday that he was going to call in sick on Sunday. The claimant did not go to a doctor to verify he had been ill. Lough told the claimant he was still suspended so the employer could investigate. On December 26, the employer discharged the claimant because he refused to work a mandatory schedule on Sunday, December 23.

REASONING AND CONCLUSIONS OF LAW:

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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

This case revolves around the credibility of the witnesses. First, undisputed facts indicate the claimant told Jensen on December 18 that he understood it was mandatory to work as scheduled on Sunday, December 23. After Jensen talked to the claimant on December 18, he understood the claimant would work on Sunday. On Friday, another employee contacted Jensen to report that the claimant had crossed his name off the schedule and indicated he was

going to call in sick on Sunday. Jensen then contacted Harty who in turn talked to the claimant. The claimant admits he talked to both Harty and Jensen on Friday, December 21.

The disputed testimony revolves around what the claimant said to Harty and Jensen during his conversation with them on Friday, December 21. Both Harty and Jensen testified that the claimant told them he was going to call in sick on Sunday and would not be work. The claimant denies he made such a statement to either person. Based on the fact the employer's witnesses read previously prepared statements and some information in the prepared statement was not correct, the claimant's testimony is deemed more credible than the employer's testimony. Although the employer asserted the claimant went out of town, the facts do not support this assertion. Another employee had gone out of town. Also, it would be colossally stupid for anyone to tell a supervisor on Friday they planned to call in sick on Sunday so they would not have to work and then fail to provide verification that they had actually been sick and could not work. When Jensen and Harty talked to the claimant on December 18 they both believed the employee who reported the claimant had said he was going to call in sick on Sunday. Based on a preponderance of credible evidence, the facts do not support the employer's assertion that on December 18 the claimant told co-workers he would not be at work on Sunday because he was going to call in sick. Instead, the credible evidence indicates the claimant confirmed that he knew was scheduled to work on Sunday and would be at work.

This case would have been much easier if the claimant had provided supporting evidence he was ill and unable to work on Sunday. Even though the claimant did not provide this information either by going to a doctor or having a witness testify as to his ability to work on Sunday, the employer still has the burden to establish the claimant committed work-connected misconduct. Based on a preponderance of the credible testimony, the evidence does not establish that the claimant committed work-connected misconduct. Therefore, as of December 23, 2007, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's January 14, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of December 23, 2007, the clamant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employers' 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/css