IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DEAN MOBERG
Claimant

SHANER OPERATING CORP
Employer

APPEAL NO: 12A-UI-06896-DWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/20/12
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's June 7, 2012 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant's employment ended for non-disqualifying reasons. The claimant participated in the hearing with his witness, Derek Lawson, a former lead line cook. Keith Mokler, a Corporate Cost Control representative, appeared on the employer's behalf. John Andres, the executive chef, testified on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working as a full-time line cook for the employer in July 2011. Prior to May 19, 2012, the claimant's job was not in jeopardy. Jeff Deets, the sous chef, supervised the claimant and scheduled employees.

Deets posted weekly schedules on Wednesday morning. If the schedule changed after it was posted, the employer typically contacted the employee affected by the schedule change to make sure the employee could work the new schedule. When the schedule was posted on Wednesday, May 16, the claimant was scheduled to work on May 19 from 1 to 9 p.m. The claimant worked on Wednesday and Thursday and his Saturday schedule was not changed. On Friday, May 18, the employer contacted the claimant to ask if he could come in and work. The claimant could not work on Friday, his scheduled day off.

The claimant reported to work before 1 p.m. on May 19. After working one or two hours, Deets told the claimant to check the schedule because there had been a change. After the claimant saw Deets had changed his schedule to work until midnight or an 11-hour shift, the claimant told Deets he had plans after 9 p.m. and could not work until midnight. Deets responded by telling the claimant that he needed to work until midnight.

Around 7 p.m., Deets asked Lawson if he could work until midnight. After Lawson indicated he could work until midnight, the claimant assumed he would not have to work until midnight. Shortly after 8 p.m., Deets told the claimant that if he did not work until midnight, he would not have job. The claimant was upset by this comment because Deets had not followed the normal procedure when he changed his Saturday schedule and Lawson had already indicated he could work until midnight. The claimant assumed Deets changed the claimant's schedule without the claimant's knowledge to get back at him for not coming to work the day before. Since the claimant already told the employer he could not work until midnight and Deets just told him he would not have a job if he did not, the claimant left work early, around 8:15 p.m., on May 19.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The facts do not establish that the claimant voluntary quit. Instead, the employer discharged the claimant when Deets told the claimant he would not have a job if he did not stay and work until midnight.

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 claimant and Lawson testified that Deets told the claimant he would not have a job if he did not work until midnight. Since Deets did not testify, the claimant's testimony about what Deets did and said to him was not refuted. Even though Deets no longer works for the employer, the employer could have subpoenaed him to participate at the hearing, but did not.

The next issue to decide is whether the claimant committed work-connected misconduct. The evidence suggests that since Deets changed the claimant's scheduled after he declined to work on his day off, did not ask the claimant if he could work an extra three hours or until midnight, which was the normal practice, and required him to work until midnight even after Lawson said he could stay until midnight, Deets was upset at the claimant for not working on his day off.

Also, expecting an employee to work 11 hours instead of the eight hours he was scheduled to work without talking to the employee is not reasonable. Since the claimant's job was not in jeopardy before May 19, and Deets was his supervisor, the claimant had no reason to doubt Deets' authority to discharge him. After Deets told the claimant that if he did not work until midnight, he did not have job, it made no difference if the claimant left at 8:15 or 9 p.m. Even though the claimant did not go to Andres about the schedule, Deets did the scheduling, not Andres. If Deets did not have the authority to discharge, he should not have told the claimant he would not have job if he did not work until midnight. Deets could have asked Andres to talk to the claimant on May 19, but did not do so.

When Deets changed the claimant's schedule without verifying the claimant could work 11 hours instead of 8 hours, the employer did not act reasonably. The employer discharged the claimant because he would not stay and work an extra three hours or an 11-hour shift. While the employer may have had business reasons for discharging the claimant, the claimant did not commit work-connected misconduct. As of May 20, 2012, the claimant is qualified to receive benefits.

DECISION:

The representative's June 7, 2012 determination (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of May 20, 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

_____
Decision Dated and Mailed

dlw/kjw