IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

BLANCA E ALVAREZ
Claimant

JACOBSON INDUSTRIAL SERVICES
Employer

APPEAL NO. 09A-UI-02788-DT

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 01/18/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Blanca E. Alvarez (claimant) appealed a representative's February 19, 2009 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Jacobson Industrial Services doing business as Jacobson Staffing (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 19, 2009. The claimant participated in the hearing and presented testimony from one other witness, Nomey Flores. Elizabeth Jerome appeared on the employer's behalf. Ike Rocha served as interpreter. Based on the evidence, the arguments of the parties, a review of the law, and assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on November 8, 2004. She worked full time doing packaging on an assignment at the employer's sister company, Jacobson Packaging. Her last day of work was January 22, 2009. The employer discharged her on that date. The reason asserted for the discharge was the conclusion the claimant had made a threat against another employee.

The claimant told at least one other employee on the morning of January 22 that she had been having a premonition or "bad feeling" that something bad could happen to another employee. She debated with her coworker, Ms. Flores, as to whether to say something to this other employee, but ultimately asked a third employee to tell the second employee about this premonition. However, the message as relayed by the third employee was that the second employee should "be careful" or the claimant would "beat her up" in the parking lot. Since this is the message received by the second employee, she made a complaint. The third employee, who had transmitted the message, claimed that this was the message the claimant had given

her to convey. There was no first-hand testimony to this effect at the hearing; the claimant denied that she had made any reference to causing harm or "beating up" the second employee.

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 that 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 that 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 the allegation that she had threatened physical harm against a coworker. The employer relies exclusively on the second-hand account from the coworker who supposedly transmitted the claimant's message; however, without that information being provided first-hand, the administrative law judge is unable to ascertain whether the transmitting coworker might have been mistaken, whether she is credible, or whether the employer's witness might have misinterpreted or misunderstood aspects of the coworker's report. The administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant in fact included a threat of harm by herself in her message. 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.

DECISION:

The representative's February 19, 2009 decision (reference 01) is reversed. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

_____
Lynette A. F. Donner
Administrative Law Judge

_____
Decision Dated and Mailed

ld/kjw