IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

ARTHUR W WILLIAMS
Claimant

CATHOLIC HEALTH INITIATIVES - IOWA
Employer

APPEAL NO: 19A-UI-09963-JE-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/24/19
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 13, 2019, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 14, 2020. The claimant participated in the hearing with Attorney Bruce Stoltze, Jr. Brenda McGraw, Manager of Facilities and Safety and Andy Jennings, Human Resources Business Partner, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time security officer for Catholic Health Initiatives from August 10, 2015 to November 25, 2019. He was discharged for his response to a training exercise and insubordination.

On November 3, 2019, the employer conducted an infant abduction training. Manager of Facilities and Safety Manager Brenda McGraw's husband role played the abductor and went out the back door accompanied by Ms. McGraw who then went back inside the hospital to evaluate the response of employees. The internal alarm was set off which triggered the public safety dispatcher's office and the dispatcher notified officers. The claimant was in a mobile unit and was the first to arrive. The parties disagree on whether Ms. McGraw told the claimant it was a drill before she proceeded up the stairs so she could observe the response. She then saw the claimant head toward the door where the "abductor" was sitting on a bench just outside the door with the doll visible in a backpack approximately three feet away. She followed him and when she arrived at his location he had the "abductor" face down on the cement, palms up, with his foot on his left shoulder and his ASP out and extended. She told him the exercise was over and he removed his foot and Ms. McGraw helped the "abductor" to his feet. He had asked the "abductor" where the "baby" was and when he did not respond immediately the claimant extended his ASP and told the "abductor" to get on the ground face down. The employer was

concerned that the claimant used more force than necessary and did not contact the dispatcher to tell him it was a drill after Ms. McGraw believed she told him earlier. As a result, the police were called but were notified before leaving for the hospital that it was an exercise.

Employee training in infant abductions consists of an initial conversation during orientation and a discussion of the response after a drill. The employer expressed its expectation that the claimant should have asked the "abductor" if he was involved with the abduction and that there was no need to proceed down the "force continuum."

On November 14, 2019, Ms. McGraw and Director Diane Cummings were conducting a staff meeting regarding how to recognize cultural differences. They broke into groups of three to perform a "storytelling activity." The claimant was paired with an evening supervisor and they needed a third member of the group so Ms. Cummings offered to join them and as she approached she jokingly said something to the effect of the group being "lucky" she was joining them and the claimant, angry about being called into work for the meeting, said, "Have you two had a psych eval lately?" Ms. Cummings asked him what he said and the claimant repeated it and Ms. Cumming then redirected him to the activity.

On November 15, 2019, Ms. McGraw and Supervisor Ivan Williams met with the claimant to discuss the abduction drill and the insubordination on November 14, 2019. They talked about the November 3, 2019, abduction exercise and then Mr. Williams asked the claimant why he asked Ms. Cummings if she had a psychiatric evaluation and he said, "What's next? Nap time?" He continued that in his years of employment as a police officer he had never heard of anything like "story time" in the workplace. Mr. Williams told him the comment was very inappropriate and reiterated the purpose of the cultural exercise and the claimant said he "didn't get it. The cultural beliefs or the storytelling." The employer told the claimant they would discuss the situation further with Ms. Cummings and determine what corrective action to take. The claimant worked from November 15 through November 25, 2019, at which time his employment was terminated.

The claimant received a written warning May 29, 2019, for unprofessional actions with management after he interrupted a conversation with the previous manager of facilities and safety who worked on developing a new software system and told him the new computer system "sucked."

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
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> 2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
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> a. The disqualification shall continue until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

> Discharge for misconduct.
>
> (1) Definition.
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> a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which 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. On the other hand, 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.

Iowa Admin. Code r.871-24.32(8) provides:

> (8) Past acts of misconduct. 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *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 substantial and 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 the claimant's attitude toward management was poor, the November 3, 2019, incident occurred during a training exercise and although he handled it inappropriately it did happen during a learning situation. The training prior to November 3, 2019, was fairly minimal and the issue of whether the claimant was told it was an exercise is in dispute.

The claimant further demonstrated his poor attitude and disdain for management with his comments to Ms. Cummings November 14, 2019, and during the follow up meeting November 15, 2019. His comments were ill-advised and as a former police professional he knew or should have known that his statements were insubordinate at best.

The claimant showed poor judgement in both situations. One incident occurred November 3 and one incident happened November 14, 2019, but the employer waited until November 25, 2019, to terminate his employment. Although the employer met with the claimant November 15, 2019, it chose not to take any action at that time. If it was concerned about the claimant's use

of force in the abduction exercise and insubordination during the storytelling meeting it should have acted in a timely manner. Consequently, neither event was a current act of unemployment. Therefore, benefits must be allowed.

DECISION:

The December 13, 2019, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder
Administrative Law Judge

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Decision Dated and Mailed

je/scn