IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

KELLY J KNUEVEN
Claimant

METRO FOOD & DRINK LC
Employer

APPEAL NO. 07A-UI-04169-DWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/25/07 R: 01
Claimant: Appellant (2/R)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Kelly J. Knueven (claimant) appealed a representative's April 19, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Metro Food & Drink LC (employer) would not be charged because the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 8, 2007. The claimant participated in the hearing with his witness, Jay Antrim, his former supervisor. Brett Tell, Lori Frost, and Lyn Case, the current kitchen manager, 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 claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 13, 2005. The claimant worked about 35 hours a week as a dishwasher. His supervisor was Antrim.

On March 10, the claimant became ill at work. The employer called an ambulance and the claimant was taken to the hospital. The claimant was released from the hospital the next day. The claimant understood he did not have any work restrictions when he was released. After he was released from the hospital, the claimant went to work on March 11 and talked to Antrim. The claimant told Antrim he was ready to come back to work. The claimant learned the employer did not have any hours scheduled for him. Antrim wanted the claimant to provide a doctor's statement to make sure the claimant's doctor had released him to return to work after he had been hospitalized.

On March 14, Antrim talked to the claimant and asked him to come to work to complete an incident report. The claimant did this. The claimant gave Antrim the completed paperwork on March 14. The claimant again asked Antrim about returning to work, but Antrim indicated the employer did not have any hours for him. Between March 14 and 23 management personnel called the claimant's home to find out if he had been released to work or when he was returning to work. No one in management was successful in contacting the claimant and the claimant did not have an answering machine.

The claimant went to the employer's business on March 16 because he thought it was payday. The claimant went again on March 18. Each time, the claimant looked to see if he was scheduled to work and he was not. When the claimant talked to Antrim, he told the claimant that the employer did not have any hours for him. Antrim had talked to upper level management and was told to give this message to the claimant. The employer's business was not that busy during this time and other employees easily covered the claimant's dishwashing duties.

Antrim also told the claimant that before he could return to work, he had to provide a doctor's statement to the employer indicating the claimant could return to work. The claimant went to his ear, nose and throat specialist to obtain the required statement. The statement indicated the claimant would return to work pending his recovery with a speech therapist that was currently providing the claimant with on-going treatment. The claimant gave this statement to Antrim on March 23. On March 25, the claimant went to the employer's business to see if he was scheduled to work yet and he was not. The claimant talked to Case on March 25 and learned the employer no longer considered him an employee. Upper level management did not know or acknowledge that the claimant had been in contact with Antrim on a regular basis since March 11 and considered him to have voluntarily abandoned his employment. As of March 22, the employer no considered the claimant an employee.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if a claimant voluntarily quits employment without good cause 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 intended to quit his employment. Instead, the employer discharged the claimant.

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).

Even though the claimant regularly contacted the kitchen manager between March 11 and 25, the general manager did not realize the extent in which the claimant kept in contact and asked about his schedule. The claimant had problems talking during this time, but the claimant's inability to talk did not affect his performance as a dishwasher. The facts suggest that since the employer's business was slow, the employer did not really need the claimant to work during the time in question. The employer terminated the claimant's employment after incorrectly concluding the claimant had not kept in contact with the employer. The employer established business reasons for discharging the claimant. The facts do not establish that the claimant intentionally or substantially disregarded the employer's interests. The claimant did not commit work-connected misconduct. Therefore, as of March 25, 2007, the claimant is qualified to receive unemployment insurance benefits.

The testimony the claimant presented was conflicting regarding any work restrictions or whether his doctor has released him to return to work. The issue of whether the claimant is able to work is remanded to the Claims Section to investigate or obtain a doctor's statement to determine the ability to work.

DECISION:

The representative's April 19, 2007 decision (reference 01) is reversed. The claimant did not voluntarily quit his employment. The employer discharged him for business reasons that do not constitute work-connected misconduct. As of April 19, 2007, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant. An issue of whether the claimant is able to work is remanded to the Claims Section to investigate or obtain a doctor's statement to determine the claimant's ability to work.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw