IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JERRI L KARR
Claimant

THE NANNIES UNLIMITED CHILD CENTER
Employer

APPEAL NO. 07A-UI-02405-DWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/29/06 R: 02
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 26.14(7)(b) and (c) – Request to Reopen the Hearing

STATEMENT OF THE CASE:

The Nannies Unlimited Child Center (employer) appealed a representative's March 6, 2007 decision (reference 03) that concluded Jerri L. Karr (claimant) was qualified to receive unemployment insurance benefits, and the employer's account could be charged for benefits paid to the claimant 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 March 26, 2007. The claimant participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's witness/representative could be contacted to participate at the hearing. As a result, no one represented the employer.

After the hearing had been closed and the claimant had been excused, the employer contacted the Appeals Section for the hearing. The employer requested that the hearing be reopened. Based on the employer's request to reopen the hearing, 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.

ISSUES:

Did the employer establish good cause to reopen the hearing?

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits during the week of October 29, 2006. The employer hired the claimant on January 6, 2007, to work as a full-time childcare assistant. When the claimant completed her job application, she reported she had never been convicted of a felony. On the day the employer hired the claimant, the claimant told Cindy about her prior legal problems with drugs. The claimant understood she had a drug-related misdemeanor conviction, not a drug-related felony conviction. The employer

indicated the claimant would still start work and the employer would wait to see what happened when the claimant's record check came back.

In early February 2007, the claimant received information that as a result of her prior felony drug-related conviction, she could not work at a childcare facility for five years. The claimant immediately reported this information to the employer. The employer again indicated she could continue to work. The employer wanted to wait to see if the employer received a letter indicating the claimant could not work in a childcare facility. About a week later, the employer received the letter. The employer then discharged the claimant on February 14, 2007.

The employer received the hearing notice prior to the scheduled March 26, 2007 hearing. Although the employer asserted the employer followed the hearing instructions by contacting the Appeals Section sometime between March 13 and 15, the employer did not have a control number. A review of the records maintained by Appeals Section staff did not reveal a record of the employer calling in for the hearing. Supporting information that the claimant had followed the hearing instructions was found, but nothing was found for the employer.

By the time the employer called the Appeals Section on March 26, 2007, the claimant had already been excused and the hearing had been closed. The employer made a request to reopen the hearing.

REASONING AND CONCLUSIONS OF LAW:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c).

Although the employer asserted the employer had followed the hearing instructions and called the Appeals Section the day the employer received the hearing notice and provided the phone number and the name of the person appearing on the employer's behalf, the employer did not have a control number verifying this occurred. A review of the logs maintained by the Appeals Section staff indicated the employer had not called the Appeals Section prior to the hearing. As a result of these two factors, the evidence indicates the employer did not follow the hearing instruction directions. The first time the employer called the Appeals Section after receiving the hearing notice was March 26 after the hearing had been closed and the claimant had been excused from the hearing. The employer did not establish good cause to reopen the hearing. The employer's request to reopen the hearing is denied.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her 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). The facts establish the claimant believed she had been convicted of a misdemeanor, not a felony. However, when the employer hired her, the claimant informed the employer about her prior drug-related legal issues. The employer allowed the claimant to work, knowing in advance the claimant may not be able to continue her employment. Even after the claimant received information that she could not work in a childcare facility, the employer still had the claimant work until the employer actually received a letter stating the same thing.

The employer could not allow the claimant to continue her employment. Under the facts of this case, the claimant did not commit work-connected misconduct. As of February 11, 2007, the claimant is qualified to receive unemployment insurance benefits based on the reasons for this employment separation.

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

DECISION:

The employer's request to reopen the hearing is denied. The representative's March 6, 2007 decision (reference 03) is affirmed. The employer discharged the claimant for reasons that do not disqualify the claimant from receiving unemployment insurance benefits. As of February 11, 2007, the claimant is qualified to receive unemployment insurance benefits based on the reasons for this employment separation. During the claimant's current benefit year, the employer's account will not be charged.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw