IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

WALTER S BURGS
Claimant

QWEST CORP
Employer

APPEAL NO: 10A-UI-16977-DWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/14/10
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's December 9, 2010 determination (reference 03) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The determination for reference 03 is identical to the determination issued for reference 01. The only difference between the two determinations is the extension on the employer's account number. In reference 01, the extension is -001 and reference 03 is -000. Since these determinations are identical, the decision issued for reference 01 or appeal 10A-UI-16976-DWT, will also be issued for reference 03.

The claimant participated in the hearing. Shawn Lampel represented the employer and Colin Chrouser 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 employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in July 2008. The claimant worked full time in the employer's inbound call center. When the claimant started working, the employer told him about the employer's attendance policy. The employer's attendance policy and expectations are reviewed annually with employees. If an employee has six attendance issues in a rolling 12-month calendar year, the employer starts progressive discipline. On the sixth attendance issue, an employee receives a written warning. If the employee has another attendance issue, the employer gives the employee a written warning of dismissal. If an employee has another attendance issue after the warning of dismissal, the employer may discharge the employee or restate the written warning of dismissal which amounts to giving the employee a second chance.

During the last six months of his employment, the claimant was late for work five times. Four of these occurred because he overslept. The claimant also had some absences which were connected to his flex time.

On September 21, 2010, the employer gave the claimant written warning of dismissal because he overslept and was 54 minutes late for work on September 20. The claimant had family issues with his daughter that he had to deal with the evening of September 19 and was unable to go to bed until very early that morning. The claimant overslept on September 20.

On September 30, the claimant split his two breaks into three. When the claimant returned from his third break, his computer did not work properly and accurately record the time he came back from break. The employer's record indicated he had taken 50 minutes of break that day instead of his allotted 30 minutes. After the claimant reported problems with his computer, the employer investigated the incident and decided to the give the claimant another opportunity to correct his attendance. On October 26, 2010, the employer restated or gave the claimant a second written warning of dismissal. When the claimant received the October 26 warning of dismissal, he indicated he understood that if were late again before January 16, 2011, he would be discharged.

In an attempt to get to work on time, the claimant sets a digital clock and uses his cell phone as an alarm clock. The evening of November 15, the claimant plugged in his cell phone so it would recharge while he slept. He had his digital alarm clock and his cell phone alarms set to wake him up in the morning. While the claimant slept, the power at his apartment building went out. As a result of the power outage, the claimant's cell phone did not charge during the night. His digital alarm clock did not go off at the right time since it is also powered by electricity and his cell phone did not go off because it was not charged. The claimant woke up just after 8 a.m. and immediately got ready to go to work. On November 16, he reported to work 27 minutes late.

Although the claimant explained that his apartment building had a power outage, the employer discharged him on November 17, 2010, for violating the employer's attendance policy.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him 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). 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. 871 IAC 24.32(8).

The claimant knew or should have known his job was in jeopardy when he received the September 21 and October 26 written warnings of dismissal. The claimant took reasonable steps to get to work on time by setting two alarms, a digital alarm clock and his cell phone. The claimant had no control over the power outage at his apartment building when he was sleeping on November 15. On November 16, the claimant did not intentionally fail to report to work on time.

The employer established justifiable business reasons for discharging the claimant for violating the employer's attendance policy. The evidence does not, however, establish that the claimant committed a current act of work-connected misconduct. Therefore, as of November 14, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's December 9, 2010 determination (reference 03) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit a current act of work-connected misconduct. As of November 14, 2010, 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

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Decision Dated and Mailed

dlw/pjs