IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

THOMAS M HERBST
Claimant

SYSCO FOOD SERVICES OF IOWA INC
Employer

APPEAL NO. 08A-UI-06644-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/22/08 R: 04
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Thomas M. Herbst (claimant) appealed a representative's July 17, 2008 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Sysco Food Services of Iowa, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 5, 2008. The claimant participated in the hearing and presented testimony from one other witness, Russ Boffeli. Dory Goodman appeared on the employer's behalf and presented testimony from two other witnesses, Steve Caliguiri and Kelly Laudner. 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:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

After previously working for a related entity in Wisconsin, the claimant started working for the employer on February 28, 2003. He worked full time as a marketing associate in the Dubuque, Iowa, region of the employer's restaurant foods and goods supply business. His last day of work was June 25, 2008.

For the majority of his employment, the claimant had been paid on a salary basis. For a brief period in 2007 there was an attempt to put him on a salary plus commission basis, but in his compensation agreement for the fiscal year that began June 30, 2007, the claimant had been offered the option of either staying on full salary ($1,200.00 per week) or salary ($500.00 per week) plus commission. The claimant had opted to remain on straight salary. In late June 2008 the claimant's compensation contract was coming up for review and renewal. The employer informed the claimant that for the next fiscal year it was only going to offer him the option of salary ($500.00 per week) plus commission; at the current sales rate, the claimant's commissions would have been between $300.00 and $400.00 per week.

There was a meeting on June 24 between the claimant, his district sales manager, Mr. Laudner, and the director of territory sales, Mr. Caliguiri, in which the employer's intention was further spelled out and in which the claimant was advised that there was no room for negotiation. The claimant expressed his concern as to whether he would be able to remain in the employment given the reduction that he would likely realize in his income (from $1,200.00 per week to $800.00 to $900.00 per week). He speculated to Mr. Laudner that if he was forced to leave the employment, some of the area's significant clients might not stay with the employer.

On June 25 the claimant visited with two of the significant clients with whom he also had personal relationships, and advised them that he might have to quit his employment with the employer. Those clients asked for an opportunity to talk with Mr. Laudner, and the claimant arranged those communications. Both clients advised Mr. Laudner that they stayed with the employer because of the degree of service they received from the claimant and that they would likely not stay with the employer if the claimant left. Mr. Laudner then advised that he would visit with his superiors.

Mr. Laudner then contacted Mr. Caliguiri, who had already left Dubuque. He advised Mr. Caliguiri that he was feeling pressured by the client contacts that the claimant had facilitated. Mr. Caliguiri then informed Mr. Laudner that he would return to Dubuque and that Mr. Laudner should summon the claimant to meet with him later that afternoon, and that the claimant was going to be terminated. Mr. Laudner did contact the claimant and advised him to report for the meeting. When the claimant asked what the meeting was for, Mr. Laudner responded that the claimant should bring his laptop with him, as he was going to be let go. The claimant did come and turn in his computer. Mr. Caliguiri came in before the claimant left but only spoke to the claimant to remind him of the competition provisions in the claimant's agreement.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

Rule 871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The employer asserted that the claimant was not discharged but that he had quit. While the claimant intimated that he was considering quitting, he had not made a final decision to quit, but rather was attempting to negotiate to find a means of retaining his employment. The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit[1]. Iowa Code § 96.6-2. As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance. 871 IAC 24.26(21).

The issue in this case is then whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v.

[1] In the alternative, if the separation is treated as a voluntary quit, the administrative law judge would conclude that it was due to a substantial change in his contract of hire and thus for good cause attributable to the employer, even if the employer had good business reason for modifying the compensation arrangement. 871 IAC 24.26(1); Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa1988).

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 decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). 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).

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 the employer effectively discharged the claimant was, in essence, the claimant's communications with the significant clients regarding the possibility of his leaving the employer and their responsive contact with the employer seeking to intervene on the claimant's behalf. Under the circumstances of this case, the claimant's conduct was at worst a good-faith error in judgment or discretion. 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 July 17, 2008 decision (reference 01) is reversed. The claimant did not voluntarily quit and the employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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