IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JOSHUA R WATKINS
Claimant

CITY OF COUNCIL BLUFFS
Employer

APPEAL NO: 12A-UI-03289-DWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/12/12
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's March 23, 2012 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. Cindy Lynch, Dennis Dofner, Dan Christensen, Pete Pedersen, Jeremy Noel, Pat Miller and Ellen Stageman appeared on the employer's behalf. During the hearing, Employer Exhibits One through Four were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is 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 January 2008. The claimant worked full time and worked for the sewer department. During the winter months employees, including the claimant, were scheduled to do snow removal as needed. In September or October 2011 the claimant knew he could be called to do snow removal as needed from 7 p.m. to 7 a.m. When his wife was unable to take care of their children during these times, her father or a great aunt took care of the family when the claimant worked.

Since January 2007, the employer's snow removal policy informed employees that if an employee failed to respond during snow events he would be disciplined which could mean a suspension or termination. (Employer Exhibit One.) The union contract states in part that employees do not have the right to refuse overtime during snow removal operations. (Employer Exhibit Two.)

On January 11, 2012, the employer called employees on the 7 a.m. to 7 p.m. shift for snow removal. The employer called the claimant shortly after 4 p.m. The claimant's wife was home, but she had recently changed medication and for safety concerns could not be left alone. Her father was working and could not stay with the family. The claimant's great aunt was in

snowbound Logan and could not get to her home or the claimant's home. The claimant's brother agreed to stay with the family until 11 p.m.

The claimant called Dofner around 6 p.m. to ask if he had to report to work because he had problems making arrangements for someone to stay with his family. Dofner indicated that the employer needed him to work at 7 p.m. When the claimant reported to work, he asked Dofner how long employees would work that night. After Dofner indicated he did not know, the claimant said he had to leave at 11 p.m. because his babysitter could not stay later. Dofner responded that it was the claimant's decision to stay or leave, but if he left at 11 p.m. there could be consequences. The claimant did not let Dofner know about his family issues because he believed Dofner was not interested in any excuses. When the claimant returned home on January 11, his children were asleep but his wife had remained in their bedroom and had not talked to anyone when the claimant went to work.

Sometime on January 11, the claimant called Pat Miller, the Public Works Operations Director. The claimant called to set up a meeting the next day to talk to him and explain his personal situation and why he could not work past 11 p.m. on January 11. The employer suspended the claimant on January 12. The claimant did not talk to Miller until January 13. On January 13, the claimant explained the situation with his wife and why he had not worked after 11 p.m. During this meeting, Miller gave the claimant his suspension letter and advised the claimant that he was investigating the January 11 incident.

On January 17, Miller recommended that the claimant be terminated because he left work without authorization and was insubordinate when he did not complete his shift on January 11. Miller indicated this was the claimant's second incident of insubordination during the last year. (Employer Exhibit Four.)

A pre-termination hearing was held on January 26, 2012. After the employer listened to the claimant and union officials, the employer discharged the claimant on February 4, 2012, for leaving work without authorization and for being insubordinate on January 11, 2012. After the employer made the decision to discharge the claimant provided medical documentation to the employer.

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).

The employer requires employees to work mandatory overtime when they are called to remove snow. The claimant knew about and understood the employer's snow removal policy. The claimant did not inform any supervisor at work about his wife's medical issues. She has been on medication for several years but in December 2011 her physician put her on new medication. The new medication did not help the claimant's wife. After she started taking the new medication, the claimant was not comfortable leaving her home alone at night. In the past, his father-in-law or his great aunt came to his home and stayed with the family when the he had to work at night. On January 11, his father-in-law had to work and his great aunt was stranded out-of-town. Even though the claimant was only able to find someone, his brother, to stay until 11 p.m., he put Dofner on notice that he had to leave by 11 p.m. Since the claimant had concluded his immediate supervisor would not or could not do anything for him and his personal situation, the claimant contacted Pat Miller on January 11 to meet with him the next morning to explain his situation and why he could not leave his family alone after 11 p.m. on January 11.

While documentation from his wife's physician would have been helpful at the hearing to verify the claimant's testimony, the fact he called Miller on January 11 in an attempt to explain his personal situation supports the claimant's testimony about his wife's health issues and claimant's safety concerns for his family. On January 11, the claimant did not intentionally disregard the employer's interests. The two main people who helped him when he worked at night were not available to stay at his home. The claimant's brother could only stay until 11 p.m. Even though the claimant did not have permission to leave at 11 p.m., he worked four hours for the employer and told the employer before he started at 7 p.m. that he had to leave at 11 p.m.

Based on the claimant's personal situation, he was in no-win situation. The claimant may have used poor judgment when he did not explain to the employer about his wife's health condition before January 11, but it is understandable why he did not want to share this personal information with the employer. If the employer did not believe the claimant's explanation, the employer could have asked him to provide medical statements about his wife's condition, but did not.

The employer discharged the claimant for justifiable business reasons. The claimant left work early on January 11 and he was told that if he did leave early he would be subject to disciplinary consequences. The claimant worked four hours and could not find anyone to stay with his family after 11 p.m. when someone had to be with his wife. He put the employer on notice he had to leave at 11 p.m. Therefore, he was not insubordinate. The claimant left work early without authorization, but he did this because for safety and medical reasons he could not leave his family alone. The claimant did not commit work-connected misconduct. As of February 12, 2012, the claimant is qualified to receive benefits.

DECISION:

The representative's March 23, 2012 determination (reference 01) is reversed. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit work-connected misconduct. As of February 12, 2012, 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