IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

HELEN M WADDELL
Claimant

PRAIRIE VIEW OF CRESTON LLC
Employer

APPEAL NO. 09A-UI-19066-DT

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 11/29/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Helen M. Waddell (claimant) appealed a representative's December 16, 2009 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Prairie View of Creston, L.L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 2, 2010. The claimant participated in the hearing. Dena Chapman appeared on the employer's behalf and presented testimony from one other witness, Gloria Rink. 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 the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 2, 2008. Since about May 5, 2008 she worked full time as kitchen manager in the employer's assisted living facility. Her last day of work was November 30, 2009. The employer discharged her on that date. The reason asserted for the discharge was failure to comply with the employer's job expectations.

The claimant had been placed into the kitchen manager position by the prior facility administrator without the training traditionally required of someone in that position. After Ms. Chapman became the administrator, she began to more closely scrutinize the manner in which the claimant managed the kitchen. There was a minor warning given to the claimant on September 23, and on October 28 Ms. Chapman gave the claimant an action plan in which the claimant was to improve her organization and professionalism, make sure meals were served on time, and ensure the communication book was updated, that pages would be destroyed after five days. The action plan did not specify what would occur if the claimant failed to improve or satisfy the terms of the plan.

The employer asserted there were days after October 28 when meals were not started on time, but could not provide specifics. The claimant testified that the meals had been served on time.

The claimant had gotten the communication book updated, but the employer learned that in early November the claimant had taken some of the pages from the communication book home. The claimant had not been told she could not take the pages home. She denied there was any client information on any of the sheets she had taken home, and she had later disposed of the sheets. There were no further reports of non-professionalism by the claimant "bad-mouthing" employees in the department. The claimant was supposed to get some of her staff signed up for a food safety class, but by mid-November had not done so, as she was focused on other duties, so Ms. Chapman signed the staff up for the class herself.

The final incident that led to the termination was the employer's understanding that on November 24 the claimant had made some disparaging remarks about Ms. Chapman to a tenant's family members. No specifics were available, and the claimant denied making any disparaging remarks about Ms. Chapman. As a result of this allegation, in addition to the employer's dissatisfaction with the claimant's level of improvement since October 28, the employer discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

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). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. 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 matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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 cited by the employer for discharging the claimant is the allegation regarding the communication to the tenant's family as well as unsatisfactory job performance. Assessing the credibility of the witnesses and the reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant in fact made disparaging

remarks about Ms. Chapman. Further, misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. Huntoon, supra. There is no evidence the claimant intentionally failed to perform her duties to the best of her abilities. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, while the employer may have had a good business reason for discharging the claimant, her actions were not misconduct within the meaning of the statute, and she is not disqualified from benefits.

DECISION:

The representative's December 16, 2009 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she 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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