IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DENNIS R HOLMAN Claimant **LABOR READY MIDWEST INC** Employer	**APPEAL NO. 08A-UI-03555-DW** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 02/24/08 R: 04** **Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Dennis R. Holman (claimant) appealed a representative's March 31, 2008 decision (reference 01) that concluded he was not qualified to receive benefits, and the account of Labor Ready Midwest, Inc. (employer) would not be charged because the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held in Davenport, Iowa, on July 9 2008. The claimant participated in the hearing. The employer did not appear for the hearing. During the hearing, Claimant Exhibit A was offered and admitted as evidence. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits, or did the employer discharge for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in February 2002. He worked as a full-time branch manager at a local office. Dean Buttgen supervised him.

During the course of his employment, the claimant and Buttgen had disagreements. In 2005, the claimant resigned but corporate personnel intervened. The claimant and Buttgen worked out their issues and the claimant continued his employment.

In January 2008, the employer placed the claimant on a work-improvement plan. On February 15, 2008, the claimant became upset after Buttgen informed the claimant he would be riding with the claimant the following Tuesday. Previously, Buttgen informed the claimant he would ride with the claimant on Mondays and Fridays. The claimant did not appreciate that last-minute schedule change.

In a series of emails exchanged between the claimant and Buttgen on February 15, the claimant wrote to Buttgen that he would clean out his stuff that weekend and if Buttgen wanted some notice, they could talk about it. (Claimant Exhibit A.) After Buttgen's email asking if the claimant was giving notice and if February 15 was his last day of work, (Claimant Exhibit A) the two men talked on the phone. During the phone conversation, the claimant indicated he had no intention of resigning, but was frustrated. The claimant understood Buttgen's new supervisor pressed Buttgen for results, which may have been part of the reason behind telling the claimant at the last minute he would be riding or working with the claimant on Tuesday. At the end of the phone conversation, the claimant understood that he and Buttgen would work on various issues on Monday, February 18, and Buttgen understood the claimant had no intention of resigning.

Sometime later on February 15, Buttgen again contacted the claimant to inform him that upper-level management had accepted the claimant's resignation. The claimant understood, Buttgen's supervisor received the emails between himself and Buttgen and made the decision to end the claimant's employment as of February 15, 2008. The claimant immediately contacted the corporate office and learned it was out of the corporate office's hands and the claimant's resignation had been accepted. The claimant's employment ended as of February 15, 2008.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code sections 96.5-1, 2-a. Based on the claimant's testimony, after his supervisor's email asked if he were giving notice, the two men talked on the telephone instead of communicating by email. During the phone conversation, the claimant and Buttgen talked about the claimant's concerns and decided to work out problems or further discuss issues on Monday, February 18. As a result of the phone conversation, the claimant informed the employer he was not resigning. The claimant understood his supervisor knew he was not resigning and no longer considered the claimant's emails because of the planned discussions again Monday about various issues. Even though the claimant informed the employer he was cleaning out his desk before the phone conversation, his supervisor allowed him to rescind his resignation or "threat of resignation" during the phone call. Also, even though the claimant was frustrated, he had no intention of resigning. Instead, in his email he made the comment about removing his things because he wanted issues between himself and Buttgen to "come to a head" so upper-level management would again intervene so issues would be resolved as they had in 2005.

The claimant did not realize his email communications to Buttgen had been forwarded to Buttgen's supervisor. After the claimant's phone conversation with Buttgen where Buttgen knew the claimant was not resigning and the two agreed to work out issues on Monday, February 18, upper-level management informed Buttgen to end the claimant's employment by accepting his resignation. Since the employer did not participate in the hearing, it is not known why the employer decided to accept the claimant's resignation or threat of resignation after the employer allowed him to rescind it. For unemployment insurance purposes, the claimant became unemployed when the employer discharged him after the claimant's supervisor allowed the claimant to rescind his resignation or threat of resignation.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. <u>Cosper v. Iowa Department of Job Service</u>, 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 may have had business reasons for ending the claimant's employment. The claimant made an extremely poor decision when communicating by email to his supervisor, but the evidence does not establish that the claimant committed work-connected misconduct. As of March 31, 2008, the claimant is qualified to receive benefits.

DECISION:

The representative's March 31, 2008 decision (reference 01) is reversed. After the employer allowed the claimant to rescind his resignation, upper management decided to end the claimant's employment. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of February 24, 2008, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employers' account may be charged for benefits paid to the claimant.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs