IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

PHILLIP SWANSON
Claimant

BLUE SKY SATELLITE SERVICE INC
Employer

APPEAL NO: 14A-UI-01438-ET

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/12/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 5, 2014, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 28, 2014. The claimant participated in the hearing. The employer did not respond to the hearing notice by providing a phone number where it could be reached at the date and time of the hearing as evidenced by the absence of a name and phone number on the Clear2There screen showing whether the parties have called in for the hearing as instructed by the hearing notice. The employer did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time installation technician for Blue Sky Satellite Service from January 10, 2012 to January 7, 2014. He was discharged for alleged insubordination.

The claimant's job required him to work outside. There was an email discussion between the employer and employees about working Monday, January 6, 2014, due to the extremely cold temperatures forecasted. The claimant checked his email at 5:45 a.m. January 6, 2014, to see if he was being required to work that day and observed that he had been scheduled for four jobs. The employer's email also indicated that "he strongly recommended no calling in or refusing to do your job as that will not end well and would only make it worse for everyone" (Claimant's Exhibit A). The temperature was 18 degrees below zero with a wind chill of 48 degrees below zero.

The claimant responded to the employer's email at 6:33 a.m. and stated his concern about working in the subzero temperatures. He also stated he had previously had frostbite and it was very painful. Consequently, he concluded by saying he was refusing "to venture out into this weather and deal with what repercussions it will bring. I feel that I have the right to decide when

it is or isn't too dangerous for me to do something just as you or anybody else has" (Claimant's Exhibit A). The claimant's response to the employer's email was sent to all employees.

At 6:35 a.m. the employer responded to the claimant's email by stating, "Sounds good" (Claimant's Exhibit A). At 6:42 a.m. the general manager sent an email saying they would not be working in his area that day but those employees would have to make the day up later in the week. At 6:44 a.m. the general manager called the claimant and told him that he should have only contacted him rather than send a company-wide email. At 6:45 a.m. a dispatcher sent an email that the Waterloo/Cedar Rapids area was shut down by the employer due to the weather conditions and that decision had been made around 6:00 a.m. At 6:46 a.m. the employer sent all technicians an email stating, "Anyone else who wants to handle this in an improfessional (sic) and disrespectful manner like Phil just did, call me. It is one thing to voice your concern, however refusing work, especially in a group setting, will not be tolerated one bit" (Claimant's Exhibit A). At 9:55 a.m. the claimant discovered he was locked out of his email account and called the general manager to ask what was going on. The general manager said he did not know but would check into it but the claimant felt he was hesitant and asked if his employment had been terminated at which point the general manager admitted he was (Claimant's Exhibit A). The claimant was told his employment was terminated for insubordination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5-2-a provides:

> An individual shall be disqualified for benefits:
>
> 2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
>
> a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

> Discharge for misconduct.
>
> (1) Definition.
>
> a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which 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. On the other hand 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.

The employer has the burden of proving disqualifying misconduct. 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 substantial and 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). The claimant voiced legitimate concerns about working in the frigid temperatures, which reached 48 degrees below zero wind chill, January 6, 2014. The employer was upset that he responded to all employees included on the email list after the company email regarding working outside that day and determined his actions were insubordinate. While the claimant might have emailed the general manager personally, the conversation was taking place among all employees, and the claimant's failure to send a personal email to the general manager was at worst a lapse in judgment rather than intentional, disqualifying job misconduct as that term is defined by Iowa law. Therefore, the administrative law judge concludes benefits are allowed.

DECISION:

The February 5, 2014, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

_____
Julie Elder
Administrative Law Judge

_____
Decision Dated and Mailed

je/css