IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 05A-UI-00702-DWT
OC: 12/19/04 R: 02
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Mike C. Lokori (claimant) appealed a representative's January 20, 2005 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Central Iowa Hospital Corporation (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 10, 2005. The claimant participated in the hearing. Karen Pierick, the human resource business partner, appeared on the employer's behalf. 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 26, 2000. The claimant worked as a weekend patient escort. On August 24, 2004, the employer put the claimant on probation because he had not contacted his supervisor when he completed an assignment. Specifically, the employer found the claimant sitting on a bench in the hospital park when he was on the clock and supposed to be working. When an employee is put on probation, the probation is on the employee's record for 24 months.

On December 2, 2004, the employer received a report that a security guard saw three transport employees sitting in the fitness center when they were on the clock and supposed to be working. The security officer did not say anything to the claimant or other employees when he first saw them. The security officer talked to the claimant in the break room and asked if he had been in the fitness center. The security officer filed a report of his observations with the employer.

The employer also received a complaint that an employee reported seeing three transport employees in the fitness center on December 2. The employer had evidence that one of the three transport employees used his ID badge to get into the fitness center. The employer assumed the claimant and the other employee walked in when the third employee used his badge to open the door to the fitness center. The employer showed the three employees' pictures to the employee and she identified the claimant but not the other employees.

When the employer talked to the claimant, he denied he had been in the fitness center during work hours. The claimant had been in the fitness center before he started work that day. The employer, however, concluded the claimant had been in the fitness center during his scheduled shift. As a result of this conclusion, the employer discharged the claimant because he was already on probation. If the claimant had not been placed on probation in August, the employer would not have discharged the claimant on December 4 for this incident.

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 did not have any witness testify, the employee or security guard, who saw the claimant in the fitness center on December 2, 2004. The claimant's testimony is credible and must be given more weight than the employer's reliance on hearsay information. Based on the conclusions the employer made from employees who talked to the employer, the evidence establishes the employer had compelling business reasons for discharging the claimant.

For unemployment insurance purposes, however, the claimant did not commit work-connected misconduct. First, the employer acknowledged the December 2 incident does not by itself amount to work-connected misconduct. The employer discharged the claimant because he was on probation at the time of the incident.

During the February 10 hearing, the employer could only rely on reports of other people who did not participate in the hearing. The evidence reveals several conflicting facts. First, the employer indicated the security guard saw the claimant in the fitness center at 7:30 p.m. The security access record, however, indicates another transport employee used his badge to get into the fitness center at 8:19 p.m. Since the three transport employees were supposed to be in the fitness center at the same time, there is a question as to when the employees were in the fitness center. When the security guard initially talked to the claimant, he told the claimant he was checking on a complaint made by an employee to the claimant's manager. The evidence does not establish at what time a female employee saw three transport employees in the fitness center. The security guard did not tell the claimant that he saw the claimant in the fitness center. Another question is whether the security guard actually saw one or more employees in the fitness center and why the employer could only identify the claimant and not the other two transport employees. A preponderance of the evidence does not establish that the claimant was in the fitness center during his shift. Therefore, the claimant did not commit work-connected misconduct. As of December 19, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's January 20, 2004 decision (reference 01) is reversed. The employer discharged the claimant for compelling business reasons that do not constitute work-connected misconduct. As of December 19, 2004, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/sc