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

NOEL SANTOS
Claimant

CITY OF IOWA CITY
Employer

APPEAL NO. 07A-UI-09079-DWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/07/07 R: 03
Claimant: Appellant (2/R)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Noel Santos (claimant) appealed a representative's September 20, 2007 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits, and the account of City of Iowa City (employer) would not be charged because the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 9, 2007. The claimant participated in the hearing. Chris Gilchrist, the assistant superintendent, and Karen Jennings 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 claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The employer initially hired the claimant in April 2006 to work as a seasonal or seven-month employee. The claimant worked until October 2006 under his first employment agreement. The employer rehired the claimant in March 2007 to work again work as a seven-month seasonal employee. The claimant understood he would do landscaping and maintenance work, and he would work part-time at the beginning and end of his seven-month employment. In 2007 the claimant agreed he would not attend school during the summer months as he had during the summer of 2006. The claimant did not realize the employer had no idea he would again be attending classes the fall of 2007. The claimant planned to work part-time when classes began in the fall of 2007.

The claimant needed some dental surgery. His supervisor, Bruce Endress, informed Gilchrist on August 10 that the claimant would be off work August 13 through 15 for dental work. The claimant's dental surgery was initially scheduled on August 13. His dental surgery was delayed at the last minute until August 14. Although Gilchrist received information that the claimant had

not contacted Endress until August 24, the claimant called Endress on August 13 and informed him about the delay with his dental surgery. After talking to Endress, the claimant understood it was all right to contact Endress again in seven to ten days to let the employer know when the claimant's dentist released him to return to work.

On August 22, the claimant's dentist informed him he could return to work the next week. The claimant did not call the employer until August 24 to report that he would be at work the following Monday, August 27. When the claimant called on August 24, Gilchrist told the claimant that he assumed the claimant had quit when he did not call or report to work anytime after August 15. The claimant informed Gilchrist that he had dental surgery and other employees knew he had been unable to work as a result of the surgery. The claimant also told Gilchrist that he would only be able to work part-time because fall classes were starting. The claimant planned to work 7:00 a.m. to 11:00 a.m., Monday through Friday. The employer indicated the employer needed a full-time employee, not a part-time employee. The employer no longer considered the claimant an employee as of August 24, 2007.

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 §§ 96.5-1, 2-a. The facts do not establish that the claimant intended to quit his employment. The undisputed facts show the employer knew the claimant would not be at work on August 13, 14 and 15.

The person that could have resolved the disputed testimony presented during the hearing, the claimant's supervisor, did not participate in the hearing. A preponderance of the evidence indicates the claimant talked to his supervisor on August 13 and understood he did not have to contact him again until August 22 or 24. The facts also reveal that Gilchrist had no idea why the claimant had not returned to work on August 16. Based on his knowledge or lack of information, Gilchrist reasonably assumed the claimant was not returning to work. But this assumption was incorrect. Ultimately, the employer initiated the employment separation by not allowing the claimant to return to work on August 27, 2007. For unemployment insurance purposes, the employer discharged the claimant.

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 claimant may have used poor judgment when he did not contact his supervisor between August 13 and 24, but based on the August 13 conversation the claimant had with Endress, the claimant had no reason to believe his job was in jeopardy when he called on August 24. The facts do not establish that the claimant committed work-connected misconduct. Therefore, as of August 26, 2007, when the claimant reopened his claim, he is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements.

Since the claimant attends school, the issue of whether he is able to and available for work must be remanded to the Claims Section to investigate and make a determination.

DECISION:

The representative's September 20, 2007 decision (reference 02) is reversed. The claimant did not voluntarily quit his employment. Instead, the employer discharged him for reasons that do not constitute work-connected misconduct. As of August 26, 2007, 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. The issue of whether the clamant is able to and available for work while he attends school is remanded to the Claims Section to investigate and issue a decision.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/css