IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JAMES P HENSLEY
Claimant

HCM INC
Employer

APPEAL NO: 11A-UI-06436-DWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/10/11
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's May 6, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant's employment separation was for nondisqualifying reasons. The claimant participated in the hearing. Sharon Winkel, the administrator since December 20, 2010, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons that constitute work-connected misconduct or did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits?

FINDINGS OF FACT:

The claimant started working for the employer in June 2008. He worked as the head of the maintenance department. The claimant understood that the employer's policies states an employee would be discharged if an employee receives four written warnings in a year.

In November 2010, the former administrator gave the claimant two written warnings. The claimant received one warning because the former administrator concluded he had not swept or cleaned the basement floor as she asked him. The claimant swept the basement floor, but there was an area that was constantly used and was dirty every day. The claimant also received a written warning for failing to clean off some wheelchairs. The claimant did not clean all the wheelchairs in the basement, just the ones that were regularly used by the employer. The claimant did not believe these two written warnings were justified.

On February 11, 2011, Winkel gave the claimant a written warning for failing to provide her with a summary of large projects he worked on outside of his regular shift. The claimant acknowledged this warning was legitimate because he had not timely provided this requested information.

On April 11, the employer gave the claimant a write-up and suspended him for disposing of a resident's chair. The chair had been soiled and no matter what housekeeping employees did in an attempt to clean the chair; the chair had a strong urine smell. As a result of the odor, the chair could not stay in the resident's room. The claimant and housekeeping department talked about what should be done with chair. The claimant understood the consensus was to take the chair in the parking lot and get rid of it.

When a sanitation driver asked the claimant what the employer wanted done with the chair in the parking lot, he agreed that if the claimant helped get the chair in the truck the employer would not be charged money to take the chair away. The claimant thought he saved the employer $35.00. During the claimant's employment, he understood that when he or other employees had disposed of property belonging to a resident this was not a problem. After learning the resident's chair had been thrown away, the employer received a complaint from the resident's family. The employer bought the resident a replacement chair for $800.00 to $850.00.

After the chair had been disposed of, Winkel told the claimant that neither the employer nor any employee had the right to throw away property belonging to a resident without obtaining the resident's or the resident's family's permission to dispose of property. On April 11, the employer gave the claimant a written warning for throwing away the chair. The employer also suspended him.

On April 13, the employer told the claimant he could resign or the employer would discharge him because he had four written warning in less than a year. The clamant chose to resign.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntary 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.

When an employer tells an employee they can either resign or if they do not they will be discharged, the employer has initiated the employment separation. For unemployment insurance purposes, the employer discharged the claimant on April 13.

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 established justifiable business reasons for discharging the claimant. The evidence, however, does not establish that the claimant intentionally disregarded the employer's interests. Instead, he did not know that before property of any resident could be thrown away, the resident, the resident's family and the administrator had to give permission to do this. During his employment, the claimant either threw away property of a resident or knew someone who had this and was not disciplined for failing to obtain permission to do this from the resident, the resident's family and administrator.

The claimant and housekeeping personnel concluded the chair could not remain inside the building because it had an offensive odor that could not be removed. When the claimant disposed of the chair, he thought he saved the employer $35.00. Under these facts, the claimant did not commit work-connected misconduct. Therefore, as of April 10, 2011, he is qualified to receive benefits.

DECISION:

The representative's May 6, 2011 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of April 10, 2011, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs