IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ANITA N BUTLER
Claimant

THE CBE GROUP INC
Employer

APPEAL NO: 10A-UI-13156-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 08/15/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Anita N. Butler (claimant) appealed a representative's September 21, 2010 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with The CBE Group, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 3, 2010. The claimant participated in the hearing. Misty Erdahl 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 2, 2007. She worked full time as a collector in the employer's collections agency, normally working on an 8:00 a.m. to 4:30 p.m. schedule Tuesday through Friday, and working eight hours on Monday, usually until 9:00 p.m. Her last day of work was August 17, 2010. The employer discharged her on that date. The reason asserted for the discharge was being given a third attendance warning resulting in a third written warning under the employer's disciplinary process.

The claimant had received a first and second written warning under the employer's disciplinary process on June 8 and July 28, 2010; these warnings were for job performance/debt collection violations. The claimant had received a coaching on attendance on May 28 and a verbal warning for attendance on August 16. Specific information regarding the underlying reasons for those attendance warnings was not available.

On August 16 the claimant missed about a half-hour of work for personal reasons, but she had spoken to her supervisor about avenues by which she could make up the half-hour. One of the options she presented was to come in a half hour early on August 17. Her supervisor did not give her a specific response, so the claimant later went back to her supervisor with another

option. The claimant had understood that the second option had been accepted. However, the claimant's supervisor subsequently approved the option the claimant had presented for her to come in at 7:30 a.m. on August 17. The supervisor had not directly informed the claimant which option she was approving before leaving on August 16. The claimant did not report for work until 8:00 a.m. on August 17. Because the claimant did not report for work at 7:30 a.m. to make up the half-hour, the employer determined to issue a written warning for attendance. Because this was the claimant's third written warning for a disciplinary reason, she was then discharged.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

Absenteeism can constitute misconduct; however, to be misconduct, absences must be both excessive and unexcused. 871 IAC 24.32(7). Excessive unexcused absences can constitute misconduct, however, in order to establish the necessary element of intent, the final incident must have occurred despite the claimant's knowledge that the occurrence could result in the loss of her job. Cosper, supra; Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). First, the employer has not established that the claimant had excessive prior unexcused absences. Further, it is clear that the claimant's failure to report for work at 7:30 a.m. on August 17 to make up the half-hour was not volitional, as she had not been informed by her supervisor that the supervisor had accepted this proposition, rather than the more recent alternative presented by the claimant to the supervisor. Therefore, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed. The employer has failed to meet its burden to establish misconduct. Cosper, supra. The claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's September 21, 2010 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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