IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

BETTY J MILLS
Claimant

GOOD SAMARITAN SOCIETY INC
Employer

APPEAL NO. 08A-UI-06635-SWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/15/08 R: 01
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated July 10, 2008, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on July 10, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Bruce Radtke participated in the hearing on behalf of the employer with witnesses Denise Leal and Mary Doyle. Exhibits One through Seven were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a cook and dietary assistant from February 3, 2005, to June 16, 2008. The claimant was informed and understood that under the employer's work rules, if shorts were worn, they needed to be uniform quality and no more than two inches above the knee. She also knew that that she was supposed to record menu changes in the substitution log.

The claimant had received a written warning on March 26, 2008, for inconsiderate treatment of coworkers after she (1) demanded that a coworker give her a pan that the coworker had been using instead of using a different pan and (2) made negative remarks about the coworker to other employees. The claimant received a final warning on May 22, 2008, for inconsiderate treatment of coworkers on April 20, 2008, for making a remark to a coworker that the coworker was not the cook and did not get to decide what vegetable a resident would receive.

On May 31, 2008, the claimant made hot cereal, toast, and bacon instead of French toast and bacon, as was listed on the menu. She did not do this deliberately but instead misread what the menu said. A dietary consultant pointed out the error, but the claimant forgot to record the discrepancy on the substitutions log. It was common for cooks to neglect to record every menu change, and the claimant was unaware of anyone who had been disciplined for this.

On June 13, 2008, Mary Doyle, the dietary supervisor, believed the shorts the claimant was wearing were too short and were too thin, so they were not of uniform quality. Doyle never said anything to the claimant about violating the dress code until she was discharged. The claimant had worn shorts

like what she wore on June 13, 2008, in Doyle's presence several times before and Doyle never said anything to her. The shorts were not more than two inches above her knees.

The employer discharged the claimant on June 16, 2008, for preparing the wrong meal and not documenting the change on May 31 and for violating the dress code on June 13.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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 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).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No current act of willful and substantial misconduct has been proven. The employer has not proven the claimant violated the dress code on June 13. The claimant's mistake in making hot cereal and bacon on May 31 and failure to document the change was not deliberate. No recurrent negligence equaling willful misconduct in culpability has been proven.

DECISION:

The unemployment insurance decision dated July 10, 2008, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw