IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

BRIAN J MILLEN
Claimant

SEDONA STAFFING
Employer

APPEAL NO. 09A-UI-00326-DWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/07/08 R: 04
Claimant: Respondent (4)

Section 96.5-2-a – Suspension
Section 96.5-3-a – Refusal of Suitable Work

STATEMENT OF THE CASE:

Sedona Staffing (employer) appealed a representative's January 7, 2009 decision (reference 01) that concluded Brian J. Millen (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 26, 2009. The claimant participated in the hearing. Colleen McGuinty and Kathy Hutchinson 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 benefits, or did the employer discharge him for work-connected misconduct?

Is the claimant able to and available for work as of December 14, 2008?

On December 17, 2008, did the claimant refuse an offer to return to work without good cause?

FINDINGS OF FACT:

The claimant registered to work for the employer's clients in August 2007. The employer assigned the claimant to a job at Med Plus. During his shift December 1-2, a Med Plus human resource representative escorted the claimant from the premises and told him to pick up his personal belongings. The Med Plus representative contacted the employer the morning of December 2. Med Plus wanted the claimant to take a few days off after he had an outburst during his December 1-2 shift. The claimant had worked at Med Plus for over three years and Med Plus was concerned about the quality of his recent work. Med Plus thought that if the claimant took off a few days to get his personal issues resolved, he would again do quality work. When the claimant was escorted from work during his December 1-2 shift, he assumed he had been discharged. No one from Med Plus, however, told the claimant he was discharged.

The employer contacted the claimant on December 2 and told him he was not to return to work at Med Plus for a few days. The employer also informed the claimant that he would be called back to work at Med Plus.

On December 15, the employer attempted to contact the claimant to let him know he could return to work at Med Plus that night. The claimant did not respond to the employer's December 15 message. On December 17, the employer talked to the claimant and told him he could return to the job assignment at Med Plus. The claimant then informed the employer he would not return to work because Med Plus had discharged him during his December 1-2 shift. Also, the claimant no longer had transportation. The claimant lost his vehicle the week of December 7.

The claimant asked the employer for work in Manchester, but the employer did not have any work available for him in Manchester. Sometime before December 1, the claimant told the employer he would probably lose his vehicle. The employer then contacted Med Plus and learned other employees in the claimant's area worked at Med Plus and the claimant could carpool with another employee. Med Plus did not talk to the claimant about carpooling with another employee.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer suspends or discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-2-a. The evidence establishes the employer's client, Med Plus, suspended or temporarily laid off the claimant during his December 1-2 shift.

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).

While the claimant may have assumed he was discharged when Med Plus personnel escorted him out of the building and told him to pick up all his personal property, Med Plus did not tell the claimant he was discharged. Med Plus personnel only told the claimant to leave after he had an outburst at work. On December 2, the employer told the claimant Med Plus wanted him to take a few days off from work, and he would be called back to work at Med Plus. The claimant's unemployed status as of December 2 amounts to a suspension or layoff for nondisqualifying reasons. As of December 2, the claimant is qualified to receive benefits.

A claimant, however, is not qualified to receive unemployment insurance benefits if he refuses an offer of suitable work without good cause. Iowa Code § 96.5-3-a. The law presumes a claimant is disqualified if he refuses work with a former employer. 871 IAC 24.24(14). On December 17, the claimant refused to return to work at Med Plus. Even though the claimant did not have a vehicle any longer, he could have carpooled with another person. The claimant did not tell the employer he could not work at Med Plus because he did not have transportation. Instead, the claimant just refused to go back to work at Med Plus because he did not believe he had been treated fairly when he had been escorted from the premises during his December 1-2 shift. Based on the evidence in this case, the claimant refused to return to work at Med Plus for reasons that do not qualify him to receive benefits. As of December 14, 2008, the claimant is not qualified to receive benefits.

DECISION:

The representative's January 7, 2009 decision (reference 01) is modified in the employer's favor. The claimant is eligible to receive benefits for the week ending December 13, because he was suspended or laid off from work on December 2 for reasons that do not disqualify him from receiving benefits. The claimant, however, is disqualified from receiving benefits as of December 14 because he refused an offer of suitable work without good cause. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible.

_____
Debra L. Wise
Administrative Law Judge

_____
Decision Dated and Mailed

dlw/kjw