IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

KRISTA L TORREY
Claimant

HILLCREST FAMILY SERVICES
Employer

APPEAL NO. 09A-UI-06780-DT

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 03/29/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Hillcrest Family Services (employer) appealed a representative's April 22, 2009 decision (reference 01) that concluded Krista L. Torrey (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 28, 2009. The claimant participated in the hearing and was represented by Emilie Roth Richardson, attorney at law. Julie Heiderscheit appeared on the employer's behalf and presented testimony from one other witness, Michelle Patzner. During the hearing, Employer's Exhibit One was entered into evidence. Based on the evidence, the arguments of the parties, a review of the law, and assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, 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 October 4, 2004. Until March 15, 2009, she worked full time as a staff accountant in the employer's nonprofit agency providing family services. As of March 15, she was demoted to the position of accounts receivable clerk due to errors found by a new outside auditor. Her last day of work was March 25, 2009. The employer suspended her on that date and discharged her on March 31, 2009. The reason asserted for the discharge was making negative comments about the program managers and being defensive and uncooperative.

On July 1, 2008, the employer gave the claimant a warning and probation for expressing negative opinions, particularly to outside business partners. This was most immediately prompted by the claimant in a conversation with a representative from the new outside auditor's office in which the claimant did not wholeheartedly agree that getting a new controller and new auditing procedures was a good thing, but rather indicating, "maybe, we'll see," and "yeah, maybe, I don't know."

On February 21, the claimant was in a meeting to be held with the division director, the program director, Ms. Patzner, the director of finance, as well as an outside technical consultant from the state agency from which the employer receives funding. Questions were raised as to the progress of certain procedures being implemented. The claimant became generally defensive and resistant, not taking any accountability for any issues but focusing on the division director and the program director. Ms. Patzner and the claimant left the discussion, and Ms. Patzner verbally warned her that this conduct was not appropriate and that she needed to control her feelings and expressions of her feelings. The claimant was then allowed to leave the meeting. When Ms. Patzner rejoined the meeting, the state technical consultant commented that this kind of behavior from the claimant was "typical."

On March 23, the state technical consultant was meeting with the program manager and, during the discussion, the consultant mentioned to the manager that in a meeting between the consultant and the claimant on January 5 the claimant had claimed that the problems in implementing the changes were because the division director and the program manager were "sitting around twiddling their thumbs." The program manager reported this to Ms. Patzner, and the claimant was then suspended on March 25. On March 30 the consultant was recontacted and confirmed the essence of her recollection of the January 5 comment. As a result of accepting the consultant's statement regarding the conversation, the employer discharged the claimant on March 31.

The claimant testified that she did not say the two managers were twiddling their thumbs, but rather had made a comment to the consultant on January 5 to the effect, "What do you think, that we're sitting around twiddling our thumbs?"

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 that 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 that 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).

The reason cited by the employer for discharging the claimant is the allegation she had made negative comments about the employer's managers to the outside consultant on January 5, as well as having an inappropriate attitude in the discussion on February 21. There is no current act of misconduct as required to establish work-connected misconduct. 871 IAC 24.32(8); Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988). The most recent of the incidents in question occurred over a month prior to the employer's suspension of the claimant, and the employer was fully aware of the contents of the discussion related to that incident. As to the January 5 comment, first the employer has not established by a preponderance of the evidence that the claimant actually accused the managers of twiddling their thumbs, as contrasted with her version in which she asked a rhetorical question into which she included herself, asking the consultant if she thought they were "sitting around twiddling thumbs." The employer relies exclusively on the second-hand account from the consultant; however, without that information being provided first-hand, the administrative law judge is unable to ascertain whether the consultant might have been mistaken, whether her memory of the incident is clear, or whether the employer's witness might have misinterpreted or misunderstood aspects of her report. Further, even if the version as conveyed by the employer was correct, even if the employer may not have known the specifics of the discussion until March 23, the employer was on notice at least as of February 21 that the consultant had prior negative interactions with the claimant; when the consultant told Ms. Patzner that the claimant's behavior in the meeting that day was "typical," the employer reasonably could have pursued an inquiry with the consultant as to what other discussions she had with the claimant in which this behavior had been exhibited, which reasonably would have yielded the same report of the January 5 discussion as was later reported on March 23. The employer's delay in pursuing the inquiry with the consultant cannot justify treating the incident as "current."

While the employer may have had a good business reason for discharging the claimant, it has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, 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 April 22, 2009 decision (reference 01) is affirmed. 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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