IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

LEONARD A DAVIS
Claimant

REGAL MANORS OF ONAWA INC
Employer

APPEAL NO: 08A-UI-07498-DWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/06/08 R: 01
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Leonard A. Davis (claimant) appealed a representative's August 8, 2008 decision (reference 01) that concluded he was not qualified to receive benefits, and the account of Regal Manors of Onawa, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 3, 2008. The claimant participated in the hearing. Patricia Peck, the administrator, and Dawn Cass, the claimant's supervisor, testified on the employer's behalf. Brenda Thrift and Terry Smith were also present and available to testify. During the hearing, Claimant Exhibit A was offered and admitted as evidence. 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 without good cause attributable to the employer, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in May 2007. The claimant worked as a full-time dietary aide.

In February 2008, the claimant informed the employer someone put cream on his vehicle. After the claimant reported this incident problem to a corporate official, the employer made other parking arrangements for him. The claimant felt other employees harassed him, but the employer has no record or recollection that the claimant reported any other problems or incidents.

During his employment, the employer gave the claimant several warnings. In September 2007, the employer gave the claimant three written warnings for the way he talked to co-workers or behaved around co-workers. In early March 2008, the employer gave the claimant a written warning for making farting sounds at work. The claimant declined to sign any of these written warnings. The claimant denied he had made any farting sounds at work and reported who he

believed had made the sounds. Later, the claimant learned from other employees that he had correctly identified the employee who had made the inappropriate sounds.

The claimant became increasingly frustrated at work. He believed other employees harassed him. The claimant began looking for another job.

On June 29, the employer received a report from a nurse that she felt uncomfortable around the claimant. She reported that he made comments about going out with her even though she was married. The claimant denied he had made any such comments. Another employee reported that the claimant made a derogatory remark about her after she had fallen. The claimant admitted that after the employee fell in the parking lot, he made a comment that she had enough "cush on her tush" to prevent her from getting hurt. The employee laughed with the claimant after he made the comment. The claimant learned later an employee who did not get along with the claimant reported the comment to the employer to get the claimant into trouble.

On June 30, the employer called the claimant into the office and told the claimant there was a problem because of several co-workers' complaints about him. After the employer told the claimant about the report from the employee had who fallen, the claimant admitted he made that comment. The claimant was somewhat upset and frustrated and a comment that he would just quit. The employer told the claimant could leave. The employer had already decided to discharge the claimant and had already planned to have him go home early. The claimant understood the employer discharged him and punched out.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily 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. While the employer may not have explicitly told the claimant he was discharged, before the employer called the claimant to the office the employer had already decided to discharge him. The employer made the decision to discharge without first asking the claimant about any of the complaints. Since the employer had already decided to discharge him, the employer did not attempt to have the claimant remain at work and would not have allowed the claimant to continue working. The evidence establishes the employer initiated the claimant's employment termination.

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 claimant's comment to the co-worker who fell may have been inappropriate, but he made the comment jokingly. Based on the co-worker's reaction, the claimant had no idea the co-worker had been offended by his comment. While the claimant used poor judgment, this comment does not rise to the level of work-connected misconduct.

The other employee's complaint cannot be considered work-connected misconduct. In this case the claimant denied he made any comments about going out with her. Additionally, the complaining employee did not participate in the hearing so it is not known exactly what the claimant actually said that offended her.

Based on a preponderance of the evidence, the employer made the decision to discharge the claimant for reasons that do not constitute work-connected misconduct. As of July 6, 2008, the claimant is qualified to receive benefits.

DECISION:

The representative's August 8, 2008 decision (reference 01) is reversed. The employer made the decision to discharge the claimant for reasons that do not constitute work-connected misconduct. As of July 6, 2008, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/css