IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DOYLE D FRYE
Claimant

PARKS OF IOWA LC
Employer

APPEAL NO. 08A-UI-02796-SWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/24/08 R: 01
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 17, 2008, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on April 9, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing with a representative and witness, Dayle Frye. Ray Schnettgoecke participated in the hearing on behalf of the employer with witnesses, Barb Bulgomott and Leanna Turner. Exhibits One through Four and A 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 has a barn helper from October 4, 2006, to February 7, 2008. He was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled. Ray Schnettgoecke was his supervisor.

On October 3, 2007, Schnettgoecke warned the claimant regarding his absences and tardiness after he was late for work that day. On January 18, 2008, he received a final warning after he was over three hours late for work on January 15 and was absent from work without notice on January 17. He was informed that he was required to be at work at his scheduled start time and if problems with attendance continued, he could be discharged.

On February 8, 2008, the claimant was scheduled to undergo oral surgery. He had informed Schnettgoecke earlier in the week about the need to have surgery and allowed Schnettgoecke to pick the best day for the appointment. Schnettgoecke was aware that the claimant would need the day off.

When the claimant was leaving work on February 7, Schnettgoecke told him that he needed to work on February 9. The claimant was scheduled to work every third Saturday. February 9 was

not a regularly scheduled Saturday. He told Schnettgoecke that it was not his Saturday to work and he would not be able to work on Saturday. Schnettgoecke told him that he needed to work, and the claimant responded that he was not coming in. This was the first time the claimant was informed about working on February 9. In the past, Schnettgoecke asked for volunteers if he needed someone to work on a Saturday that was not the employee's Saturday to work.

The claimant was absent from work on February 8 due to his oral surgery, and he was not able to work or even drive after leaving the dentist office. The claimant did not work or notify the employer that he was not coming in on February 9 because he believed he had made it clear to Schnettgoecke that he would not be coming in to work that day.

When the claimant reported to work on February 11, Schnettgoecke discharged him for not reporting to work after is dental appointment on February 8 and for being absent from work without notice on February 9, 2008. Schnettgoecke also considered the claimant's past attendance record and the warnings he had received regarding his attendance when he made the decision to discharge.

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.

Iowa Code section 96.5-2-a provides:

> An individual shall be disqualified for benefits:
>
> 2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
>
> a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

> Discharge for misconduct.
>
> (1) Definition.
>
> a. “Misconduct” is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such 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. On the other hand 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.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe the claimant's testimony that Schnettgoecke knew he was asking to take the day off on February 8 due to his oral surgery. I also believe Schnettgoecke did not inform him that he needed to work on Saturday until the end of the day on February 7.

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).

No current act of willful and substantial misconduct has been proven in this case. The claimant was absent from work on February 8 with notice to the employer due to a legitimate health reason. The claimant's refusal to work on February 9 was not misconduct because February 9 was not the claimant's Saturday to work, he was given short notice of the need to work on Saturday, and in the past the employer had asked for volunteers to work if he needed someone to work on a Saturday that was not the person's Saturday to work.

DECISION:

The unemployment insurance decision dated March 17, 2008, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. .

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Steven A. Wise
Administrative Law Judge

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Decision Dated and Mailed

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