

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MUHMED SELIMOVIC
Claimant

APPEAL NO: 13A-UI-09041-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 06/30/13
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's July 29, 2013 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he voluntarily quit his employment for reasons that do not qualify him to receive. The claimant participated in the hearing. Bruce Burgess, the employer's representative, and Nancy Richardson, the human resource manager, appeared on the employer's behalf. Janja Pavetic interpreted the hearing. During the October 3 hearing, Employer Exhibits One, Two and Three and Claimant Exhibits A and B were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

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?

FINDINGS OF FACT:

The claimant started working for the employer in April 1998. He worked as a full-time clerk. The last day the claimant worked was April 29, 2013. The claimant then went on an approved vacation until May 31, 2013. (Employer Exhibit Two.) The claimant's job was not in jeopardy when he went on a vacation.

During the week of May 26, the employer scheduled employees for the week of June 2. The claimant was scheduled to work on June 4, 5, 6 and 8. (Employer Exhibit Three.) On June 3, the claimant's daughter called and talked to Richardson. Richardson learned the claimant had been hospitalized while he was still in Bosnia. Richardson told the claimant's daughter to tell the claimant about short-term disability benefits through Hartford. Richardson gave the daughter an 800 number for the claimant to call and apply for short term disability benefits. The daughter understood the claimant did not need to contact Richardson again.

When the claimant received information about short-term disability benefits, he decided he did not need these benefits and told his daughter contacting Harford was not necessary. The

claimant was medically unable to fly back to Iowa in June. (Claimant Exhibits A and B.) When the employer did not receive any information from the claimant or his daughter by mid-June, Richardson contacted Harford to find out if the claimant had applied for short-term disability benefits. He had not. Richardson tried to call the claimant's phone number, but no one answered. The claimant had temporarily stopped his phone service while he was in Bosnia. Richardson also called the claimant's daughter's phone number that the employer had on record. This number had been disconnected. When the claimant had not called or contacted the employer by June 17, the employer made the decision to end his employment for abandoning his employment. (Employer Exhibit One.)

The claimant was back in Iowa on July 1. When he returned to Iowa, he had already received a letter explaining the steps he needed to follow to receive insurance because he no longer worked for the employer. The claimant did not contact the employer after he returned to Iowa because he understood the employer had discharged him two to three weeks earlier.

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. The facts do not establish that the claimant intended to quit or abandon his employment. Instead, the employer initiated the employment separation and discharged him as of June 17, 2013.

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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant did not personally talk to Richardson when he was in Bosnia. The claimant did not understand that he had to apply for short-term disability benefits with Hartford to have his June absences excused. Also, the claimant understood that since his daughter had talked to Richardson on June 3, neither he nor his daughter needed to contact Richardson again because the employer knew the claimant was ill and unable to fly back to Iowa. Based on the claimant's inability to fly back to Iowa until early July, he did not abandon his employment and he did not intend to quit his employment.

The employer ended the claimant's employment when he did not contact the employer after June 3 or report to work. While the employer established justifiable business reasons for ending the claimant's employment, the facts do not establish that the claimant committed work-connected misconduct. Based on his understanding that he did not need to contact Richardson again, he did not. He asked the Bosnian doctor about faxing the June 4 doctor's statement to the employer, but was told it would be cost prohibitive to do this. The claimant understood it could take a month for the employer to receive a letter from the claimant that he mailed in Bosnia. The claimant did not have access to Internet to send the employer an email while he was in Bosnia. The claimant may have used poor judgment when he did not ask his daughter to contact the employer again after June 3, but he understood there was no need to contact the employer again.

Unfortunately, both the claimant and employer lose in this case. The claimant lost his job and the employer lost a good employee. While the employer was in a Catch-22 situation, discharging the claimant when he was ill and unable to return to Iowa, does not establish work-connected misconduct. As of June 30, 2013, the claimant is qualified to receive benefits.

DECISION:

The representative's July 29, 2013 determination (reference 01) is reversed. The claimant did not voluntarily quit his employment. Instead, the employer discharged him for justifiable business reasons, but the claimant did not commit work-connected misconduct. As of June 30, 2013, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs