IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MARK E STEPHENS
Claimant

MAX MORGAN MOTOR FREIGHT LLC
Employer

APPEAL NO. 09A-UI-05942-SWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/10/09
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit
Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 10, 2009, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on June 1, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, Wilford Stone, Attorney at Law, and witness, Stephanie Stephens. Edward Krug, Attorney at Law, participated in the hearing on behalf of the employer with witnesses, Clint Feuerbach, Chris Bishop, and Christina Covington. Exhibits A, B, C, One, and Two were admitted into evidence at the hearing. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show the claimant's weekly benefit amount is $361.00 and that he has been paid wages of $1,061.00 from employment with Country Welding Inc. and $3,262.00 in wages from the employer since his separation from employment on October 31, 2008, for a total of $4,323.00. If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

ISSUES:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as an over-the-road truck driver December 30, 2007, to October 31, 2008. He voluntarily quit employment on October 31, 2008, due for personal reasons involving his wife's health.

After he quit working for the employer, he worked for Country Welding in November and December 2008. He received wages of $1,061.00 during that employment.

The claimant returned to work for the employer from January 12 to February 13, 2009. During this time, the claimant was paid $3,262.00 in wages.

After the claimant returned to work for the employer, there were several times where he had spoken harshly and used profanity toward a female dispatcher, Christina Covington, and some yelled at her over the phone. Covington had complained to management several times about the claimant's treatment of her. On two occasions, Clint Feuerbach, the general manager had verbally counseled the claimant about his harsh language toward Covington. Chris Bishop, an account manager, had taken complaints from Covington about the claimant's treatment of her and had heard the claimant shouting over the phone at Covington on occasion. He had also verbally counseled the claimant about his harsh language toward Covington.

On February 13, 2009, the claimant called Covington and asked her about getting his load number, his W-2, and paycheck. He asked Covington if she could bring his paycheck downstairs for him. When Covington told him that she could not, the claimant told her in an angry and loud tone of voice that it was bullshit and that it was a bitch because they were always too goddamn busy up there and he was tired of it. The claimant was frustrated because he had called twice before.

Covington then informed Feuerbach and Bishop about the conversation she had with the claimant. The employer discharged the claimant on February 13, 2009, because he was verbally abusive and insubordinate toward Covington despite prior warnings.

The use of profanity by truck drivers is common, including toward dispatchers, but the employer has attempted to deal with this by disciplining and in some cases discharging drivers. Supervisors have also used profanity in the workplace in speaking with drivers.

Although the claimant had reported a work-related injury to his teeth to the employer a few days before his discharge, this was not the reason he was discharged.

The claimant filed a new claim for unemployment insurance benefits with an effective date of March 15, 2009. His weekly benefit amount was $361.00.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a. There are two separations from employment here. The nature of a disqualification is until the person has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. In this case, even though the claimant quit employment on October 31, 2008, without good cause attributable to the employer, he had satisfied the disqualification through his employment with Country Welding Inc. and his second period employment with the employer.

Iowa Code § 96.7-2-a(2) provides that the amount of benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred unless the individual has been discharged for work-connected misconduct, voluntarily quit employment without good cause attributable to the employer, or refused suitable work without good cause. The separation that determines whether the employer is charged for benefits is actually the separation on October 31, 2008, because the claim is based on wages earned before that separation. Consequently, the employer's account will be exempt from charge for any benefits paid to the claimant during his current benefit year.

The next issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law on February 13, 2009.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct. *Myers v. Employment Appeal Board*, 462 N.W.2d 734, 738 (Iowa App.1990). The court in *Myers*, however, cautioned that the language used must be considered with other relevant factors, including the context in which it was said and the general work environment. *Id.*

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).

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. First, I do not believe the discharge had anything to do with the report of a work-related injury to the claimant's teeth. Second. the employer's evidence—consisting of consistent testimony from Covington, Feuerbach, and Bishop that the claimant had directed harsh language toward Covington, she had complained about it, and Feuerbach and Bishop had verbally counseled him about this—outweighs the claimant's testimony to the contrary. Because of the warnings, the claimant was put on notice that such conduct was unacceptable. Consequently, the claimant's violation of the warnings was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case. This also distinguishes my ruling in *Hatley v. B & B Livestock Bedding Inc*., Appeal Number 09A-UI-03188-SWT, cited by the claimant.

DECISION:

The unemployment insurance decision dated April 10, 2009, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid

wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account will be exempt from charge.

_____
Steven A. Wise
Administrative Law Judge

_____
Decision Dated and Mailed

saw/css