IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

RANDY A BEAR
Claimant

CEDAR RAPIDS BALL CLUB INC
Employer

APPEAL NO. 10A-UI-02868-DT

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 01/10/10
Claimant: Appellant (2)

871 IAC 24.1(113)a – Layoff
Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Randy A. Bear (claimant) appealed a representative's February 15, 2010 decision (reference 01) that concluded he was not 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 April 6, 2010. The claimant participated in the hearing. Charles Patrick appeared on the employer's behalf and presented testimony from one other witness, John Pfeiffenberger. 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:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in about August 2000, working as a bat boy with the employer's minor league baseball team on a seasonal basis. Beginning in about April 2004, he became a seasonal employee doing concession stand and maintenance work. The season typically went from about April through about September. The claimant's last day of work was October 14, 2009. The season had been completed in September, but he was one of a few employees who were kept on for a few more weeks to finish some maintenance work. He was laid off as of October 14, 2009, as he was done with the needed work, and no other work was available.

On or about February 22, 2010, the employer sent the claimant a letter advising him that he would not be eligible for rehire with the employer in the upcoming season, and that he was not welcome to come onto the employer's premises other than as a paying guest at games during the season. The letter indicated this was due to the employer's loss of trust in the claimant.

The reason for the loss in trust was that the employer determined that the claimant was responsible for improper access and use of the personal credit cards of Mr. Pfeiffenberger, the director of broadcasting. After the end of his seasonal work, the claimant was frequently in the routine practice of "bumming around" the employer's premises, and informally assisting Mr. Pfeiffenberger with projects. Mr. Pfeiffenberger considered the claimant a friend, and vice versa. On a day sometime approximately between November 18 and November 25, 2009 Mr. Pfeiffenberger received a call from his bank reporting suspicious activity on his credit or debit card account, which was an unsuccessful attempt to pay a cell phone bill with Verizon. Mr. Pfeiffenberger went to his car and looked in the console of the car where he routinely kept his wallet and cards. The cards were not in the bin, but were under a beverage holder on the floor of the car. Mr. Pfeiffenberger remembered that the claimant had recently been in his car using the phone charger, and recalled that the claimant's cell phone carrier was Verizon. He therefore concluded that the claimant was responsible for the inappropriate attempted use of the cards. As a result, he essentially ceased communications with the claimant and the employer determined not to rehire the claimant during the following season. No one ever confronted the claimant with the accusation or sought an explanation from him, nor was there verification that it was the claimant's cell phone bill that was attempted to have been paid with Mr. Pfeiffenberger's cards. The claimant denied in his sworn testimony at the hearing that he was responsible for or had any knowledge of the attempted misuse of Mr. Pfeiffenberger's cards or of how they were moved from one location to the other location in Mr. Pfeiffenberger's car.

REASONING AND CONCLUSIONS OF LAW:

A separation is disqualifying if it is a voluntary quit without good cause attributable to the employer or if it is a discharge for work-connected misconduct.

871 IAC 24.1(113)a provides:

> Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.
>
> a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

The separation between the claimant and the employer occurred on October 14, 2009 and was a layoff by the employer due to the end of the season; the employer had no further work it could provide to the claimant at that time. A subsequent decision on the part of the employer not to consider the claimant for rehire in the following season is not a new separation, and cannot serve as the basis for finding there to have been a disqualifying separation.

The administrative law judge further observes that even if the November 2009 incident was viewed as a possibly disqualifying event, the evidence does not support a conclusion that the claimant committed "work-connected" misconduct. 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).

While the employer may have had enough information to establish a "reasonable suspicion" that the claimant was responsible for the attempted misuse of the cards in November, in the face of the claimant's sworn denial, something more than allegations based on supposition is necessary to establish his responsibility by a preponderance of the evidence. Iowa Code § 96.6-2; 871 IAC 24.32(4); Cosper, supra. Further, given the fact that the alleged conduct occurred when the claimant was not employed by the employer, there is some question whether the employer could satisfy the requirement that the conduct be "in connection with the individual's employment" as required for disqualification on a discharge. Iowa Code § 96.5-2; Diggs v. Employment Appeal Board, 478 N.W.2d 432 (Iowa App. 1991). While the employer may have had a good business reason for deciding not to rehire the claimant, the employer did not discharge the claimant, nor was the decision proven to be due to work-connected misconduct on the part of the claimant.

As there was not a disqualifying separation, benefits are allowed if the claimant is otherwise eligible.

DECISION:

The representative's February 15, 2010 decision (reference 01) is reversed. The claimant was laid off from the employer as of October 14, 2009 due to a lack of work. The decision subsequent to the layoff not to consider him eligible for rehire is not a separation and is not grounds for disqualification. Benefits are allowed, provided the claimant is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/kjw