IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

RODNEY R ENRIQUEZ
Claimant

MILES DEVELOPMENT LLC
Employer

APPEAL NO. 08A-UI-01913-SWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/20/08 R: 02
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 22, 2008, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on March 11, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Loree Miles participated in the hearing on behalf of the employer with a witness, Carol Bower.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a facilities supervisor from April 5, 2007, to January 15, 2008. During the latter part of his employment, his work location was the Value Place Hotel in Ankeny, Iowa. His immediate supervisor was the manager, David Schmitz. His job involved performing building maintenance. It was a live-in position, and he was provided a housing unit at the hotel. He was required to work 8:00 a.m. to 5:00 p.m. on weekdays and 10:00 a.m. to 2:00 p.m. on Saturdays. He was provided a cell phone and was to be on-call in the evenings and on Sundays. When he was on-call, he was required to be on-site or no further than 15 minutes away from the hotel so he could respond when called. He understood that he was required to notify Schmitz if he was not able to work.

The claimant received a written warning on December 6, 2007, because he was not responding to phone calls from Schmitz and could not be located during working hours by Schmitz when work was required. He was instructed that he was required to punch in and out on the time clock during his regular hours, respond to Schmitz's phone calls, and be available during his regular work hours.

On January 11, 2008, the claimant was sick and unable to work. He previously had hernia surgery and had been restricted to light duty by his doctor. He was hurting and worn out because he had been performing some strenuous work in his maintenance job. He called Schmitz before the start of his shift and left a message for him stating he was sick and unable to work that day, but he was available by phone for emergencies.

Later that day, the claimant left the hotel and went to his mother's home in Des Moines so she could care for him. He was 15 minutes away from work. He stayed there Friday and Saturday but did not inform Schmitz that he had left the premises so when Schmitz knocked on his door at the hotel, he was not available.

The claimant called in again on Saturday and spoke to Schmitz that day. He let Schmitz know that he was still sick and unable to work. The claimant did not call on Sunday because he did not have any scheduled work hours.

The claimant called in sick on January 14, 2008. Later that day, the vice president, Carol Bower, called the claimant and told him that he needed to be at the hotel premises because Schmitz had been unable to find him since January 11. She also told him that he would need a doctor's release to return to work. The claimant agreed that he would stay on premises and bring in a doctor's slip.

On January 15, 2008, the claimant reported to work and provided Schmitz with a doctor's excuse that released him to work on January 16. When Schmitz informed him he could not return to work until January 16 according to the release, the claimant told Schmitz he would go get another doctor's release. When the claimant returned with the doctor's statement releasing him to work on January 15, Bower was at the premises. She and the owner, Loree Miles, had already decided to terminate the claimant because they considered him to have violated the warning he got on December 6 because he had left the premises and had not returned all of Schmitz's phone calls during the days he called in sick. During the time from January 11 to 14, the claimant never deliberately ignored a phone call from Schmitz or knowingly failed to return a voice mail from Schmitz.

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.
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> 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 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. The claimant was absent from work due to legitimate illness excused by a doctor from January 11 through 14. He properly called the employer each day he was scheduled to work to report his absence. There was no evidence presented that the claimant had been instructed to remain on premises on days he was sick. His actions in going to his mother's house while he was sick cannot be considered willful misconduct. The employer has failed to prove the claimant was deliberately ducking calls from Schmitz on the days in question. The employer admits the claimant called Schmitz on at least some of the days he was absent, and the claimant testified credibly that he personally spoke with Schmitz over the weekend. While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established.

DECISION:

The unemployment insurance decision dated February 22, 2008, reference 01, is reversed. 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

saw/css