

RECEIVED NOV 23 2015

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Employment Security Appeals Referees' Office
830 Punchbowl Street, Room 429
Honolulu, Hawaii 96813

DECISION IN THE MATTER OF: 1503479

INTERESTED PARTIES:

Date Appeal Filed: September 24, 2015

Claimant:

TAN, HERNANDO R
2238 LOKELANI ST
HONOLULU, HI 96819-2685

Section of Hawaii Employment Security Law:
HRS 383-30(2)

Appellant: Claimant

Participating: in-person
Sent via: mail

Date, Time, and Place of Hearing:

October 20, 2015; 12:00 PM

ESARO

830 Punchbowl St. Rm 429

Honolulu, HI 96813

Employer:

UNITE HERE LOCAL 5
1516 S KING ST
HONOLULU, HI 96826-1912

Parties Present: Claimant, Employer

Participating: in-person
Sent via: mail

ISSUE ON APPEAL:

Claimant appeals the September 21, 2015 Unemployment Insurance Decision disqualifying claimant for benefits pursuant to Haw. Rev. Stat. § 383-30(2) beginning August 30, 2015 and ending October 3, 2015. The issue to be determined is whether claimant was suspended for misconduct connected with work.

RULING: The Unemployment Insurance Decision is AFFIRMED.

STATEMENT OF FACTS:

Claimant is the lead organizer and president of a labor union. Claimant was suspended from August 31, 2015 through September 30, 2015 for insubordination.

Pursuant to employer's by-laws, claimant is required to perform such duties as the Financial Secretary-Treasurer (FST) may assign him. Employer has a fiscal responsibility to safeguard the monies it collects from members as dues and to ensure that the monies are accounted for and spent appropriately. Employer's fiscal duty includes insuring that it can account for the time and work of salaried employees.

On April 1, 2015, the FST issued a written memo directing claimant to work on the contract campaign for employees at Property A.

On May 21, 2015, claimant notified the FST that both management and employees at Property B were concerned about the delay in implementation of wage increases that were due under the contract. On May 29, 2015, the FST issued claimant a written memo agreeing that prompt action was needed to

2015
resolve the wage rates at Property B and assigning claimant to work on this issue. In the memo, the FST directed claimant that information was needed comparing the wage rates at Property B and two other properties and directed claimant to prepare a comparative spreadsheet comparing wage rates for each classification at all three properties. The FST directed claimant to turn in the assignment by June 3, 2015.

On June 10, 2015, the FST issued claimant a written memo notifying claimant that he had not received the comparative wage table, notifying claimant that this tardiness was unacceptable, and directing claimant to complete and submit the table no later than June 12, 2015.

On June 12, 2015, claimant sent the FST a spreadsheet with some wage information. The spreadsheet did not include complete wage information for all job classifications at all three properties.

On June 15, 2015, the FST issued a written memo which notified claimant that the spreadsheet was incomplete, factually incorrect, and inadequate. He specified the changes that needed to be made and directed claimant to redo the table and submit it by "Wednesday July 17" [sic].

On June 16, 2015, claimant responded to the FST by email. Claimant stated that the FST had made a lot of inaccurate and false statements in previous correspondence. Claimant stated that he was working on the contract for Property A and that the FST had "no clue" what was required to maintain the members at that property. Claimant stated that he would work on the spreadsheet for Property B on Thursday.

On June 17, 2015, the FST responded by email. The FST explained at length that claimant's failure to complete the comparative wage table was unacceptable. The FST also expressed concern about claimant's refusal to account for his paid work time. The FST directed claimant to submit the completed wage table on Thursday, June 18, 2015. The FST did not receive a completed comparative wage table on June 18, 2015.

On July 13, 2015, the FST issued claimant a Work Assignment Memo detailing tasks claimant needed to complete with respect to five different areas of responsibility: Property A grievance caseload, Property A contract review, Property A contract follow up, Property B wage rates, and Property B back dues. The FST notified claimant to submit a plan and timetable for completing each of these assignments. The FST pointed out that the corrected wage table for Property B had still not been completed. The FST directed claimant to submit a written report by 9:00 a.m. on July 17, 2015 including a plan detailing how and when claimant intended to complete these assignments. Claimant did not submit a response by July 17, 2015.

On August 11, 2015, the FST's assistant emailed claimant a copy of the July 13, 2015 memo and notified claimant that the FST was still waiting for a response.

As of August 31, 2015, claimant had not submitted a response to the FST's July 13, 2015 Work Assignment memo. On August 31, 2015, the FST suspended claimant for insubordination.

Claimant contends that he responded to the July 13, 2015 Work Assignment memo by email from his work email account. Claimant did not submit any written evidence to substantiate this contention. Claimant contends that his responses are contained in the laptop computer he was issued by employer. On August 27, 2015, claimant turned in his laptop to employer's IT department for standard documentation retention procedures. The laptop was still in employer's possession when claimant was suspended on August 31, 2015. Claimant did not have access to the laptop while he was suspended. Claimant's work email account is web-based and can be accessed from any internet-connected computer. Claimant returned to work on October 1, 2015 and has had access to his laptop since then. Claimant declined to retrieve his laptop from employer prior to the hearing on October 20, 2015.

REASONS FOR DECISION:

Section 383-30(2) of the Hawaii Revised Statutes provides that an individual shall be disqualified for benefits for any week in which the individual has been suspended for misconduct connected with work, and for not less than one or more than four consecutive weeks of employment, as determined in each case in accordance with the seriousness of the misconduct.

Section 15-5-51 of the Hawaii Administrative Rules provides:

(b) A suspension occurs when the employer takes action to refuse work and remuneration to an employee without terminating the employment relationship.

(c) Misconduct connected with work consists of actions which show a willful or wanton disregard of the employer's interests, such as deliberate violations of or deliberate disregard of the standards of behavior which the employer has a right to expect of an employee, or carelessness, or negligence of such a degree or recurrence as to show wrongful intent or evil design. Mere inefficiency, unsatisfactory conduct, poor performance because of inability or incapacity, isolated instances of ordinary negligence or inadvertence, or good faith errors in judgment or discretion are not misconduct. The misconduct shall be related to the work of the individual or the individual's status as an employee.

(d) In determining whether an individual's act constituted "misconduct," the department shall consider any relevant evidence presented which relates to:

- (1) Employee's reasons for the act or omission, and efforts to avoid the act or failure to act;
- (2) The relevant circumstances of the case and any causative effect therefrom upon the employee's actions;
- (3) The nature and importance to the employer of the offended interest of the employer;
- (4) Any lawful and reasonable company policy or custom;
- (5) Employer's actions to curtail or prevent the objectionable conduct; and
- (6) The nature of the act or failure to act.

(e) Situations where misconduct may be found include, but are not limited to, the following where the evidence demonstrates:

- (1) Unexcused absence or recurring unexcused tardiness; or
- (2) Altercation at work; or
- (3) Material false representations by the employee to the employer; or
- (4) Employee's gross neglect of duty; or
- (5) Employee's willful disobedience of employer's directives or employee's insubordination; or
- (6) Intentional conversion of employer's property by the employee; or
- (7) Employee's unauthorized use of intoxicants on the job; or
- (8) Employee's willful and substantial abuse of the employer's equipment or property.

The relevant issue in this case is whether claimant was suspended for misconduct connected with work, which the employer has the burden of proof to establish as the moving party in terminating the employment relationship. Misconduct can be established by a claimant's willful or deliberate disregard of the employer's interests or the standards of behavior that the employer had a right to expect of an employee. Haw. Admin. R. § 12-5-51(c). Factors to consider in determining misconduct include the reasons for an individual's actions or failure to act, his or her efforts to avoid or prevent the situation, as

well as the employer's attempts to address the situation and the importance of the employer's interests at stake. Haw. Admin. R. § 12-5-51(d).

Here, the FST issued claimant repeated written directives notifying claimant that his performance was unacceptable and assigning claimant specific tasks with specific deadlines. Although claimant contends that he responded to the FST's directives and completed the assigned tasks, claimant has failed to provide any evidence to substantiate this contention. Credence is therefore given to employer that claimant failed to respond to the FST's repeated directives or complete his assigned tasks. Claimant's behavior was insubordination in willful disregard of employer's interest. Claimant was suspended for misconduct connected with work.

DECISION:

The Unemployment Insurance Decision is affirmed. Claimant was suspended on August 31, 2015 for misconduct connected with work and therefore is disqualified for benefits pursuant to Haw. Rev. Stat. § 383-30(2) beginning August 30, 2015 and ending October 3, 2015.

Date mailed/delivered: November 20, 2015



Karen Moore
Appeals Officer

This decision becomes final 30 days from the mailing date. See attached blue sheet for further appeal rights

I do hereby certify that the foregoing is a full, true and correct copy of the original file in this office. <i>js</i>
--