IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

SHERICA S SMITH
Claimant

ALLEN MEMORIAL HOSPITAL
Employer

APPEAL NO. 09A-UI-00590-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/07/08 R: 03
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Sherica Smith (claimant) appealed a representative's January 8, 2009 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Allen Memorial Hospital (employer) for conduct not in the best interests of the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 30, 2009. The claimant participated personally. The employer participated by Ken Leibold, Director of Human Resources, and Stacy Johnson, Operations Manager. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on May 10, 2004, as a full-time phlebotomist. The claimant signed for receipt of the employer's handbook. The handbook contained a progressive disciplinary policy calling for two written warnings and a suspension before termination was to occur. Termination could be imposed earlier under certain conditions. The employer issued the claimant two written warnings and a suspension in 2006 for absences due to illness.

The employer did not issue the claimant any other warnings until Stacy Johnson became the claimant's supervisor in the Fall of 2007. On January 31, 2008, the claimant complained to the Director of Human Resources about Ms. Johnson discriminatory treatment of her. The employer had three persons of color, two physicians and the claimant. On February 5, 2008, Ms. Johnson issued the claimant a written warning for tardiness. The employer did not notify the claimant that further infractions could result in termination from employment. Ms. Johnson mentioned the claimant's complaint to the employer during the issuance of the warning. Ms. Johnson told the claimant that if she were doing anything wrong, the claimant should complain to her personally. The claimant sent an e-mail to Ms. Johnson's superior regarding

Ms. Johnson. There were three employees in the claimant's department who were tardy every day but did not receive any warnings. Ms. Johnson did not receive any disciplinary action.

The claimant was absent and granted to Family Medical Leave. When she returned to work on October 31, 2008, she found the doctor's note she had entrusted to Ms. Johnson taped to a bulletin board. A nurse said she saw the note on October 30, 2008. The claimant complained to the employer. Ms. Johnson did not receive any disciplinary action.

On or about November 17, 2008, the claimant met with the employer and said Ms. Johnson was treating her differently than other employees. Ms. Johnson was rude in her dealings with her. The employer said it would investigate. The employer instead investigated the claimant's relationship with her co-workers.

On December 4, 2008, the employer had a meeting with the claimant and Ms. Johnson. The employer told the claimant she was the problem and co-workers were intimidated by the claimant. The employer told the claimant she could not retaliate when the claimant expressed her shock. Ms. Johnson's behavior was not addressed and Ms. Johnson denied treating the claimant differently. Ms. Johnson did not receive any disciplinary action.

On December 5, 2008, the claimant was upset and sent an e-mail to her co-workers indicating they could talk to her if they had problems. The claimant also sent an e-mail to Ms. Johnson stating that she lost respect for her as a manager when she did not tell the truth in the meeting of December 4, 2008. Employees came to the claimant expressing their concern for her. On December 9, 2008, the claimant went to an Employee Assistance Program to seek help. On December 10, 2008, the employer terminated the claimant for sending out the e-mail to co-workers on December 5, 2008.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

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.
>
> 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 of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. The employer did not warn the claimant she could not ask employees to talk to her directly if they had problems with her. In fact, she was following Ms. Johnson's lead when Ms. Johnson told the claimant on February 5, 2008, to speak to her directly if she had a problem. Ms. Johnson was not disciplined or terminated for stating this or perhaps attempting to intimidate the claimant. Inasmuch as employer had not previously warned claimant about any of the issues leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Benefits are allowed.

The claimant's and the employer's testimony is conflicting. The administrative law judge finds the claimant's testimony to be more credible because the employer's testimony had internal inconsistencies. In addition, the employer displayed behavior consistent with insensitivity to certain groups of employees.

DECISION:

The representative's January 8, 2009 decision (reference 01) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw