IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

LORA A FERGUSON
Claimant

HEARTLAND EMPLOYMENT SERVICES LLC
Employer

APPEAL NO. 10A-UI-04572-NT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/21/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Lora Ferguson filed a timely appeal from a representative's decision dated March 18, 2010, reference 01, which denied benefits based upon her separation from Heartland Employment Services, LLC. After due notice, a telephone hearing was held on May 10, 2010. Claimant participated personally. The employer participated by Ms. Kathey Clarahan, Human Resource Director, and Ms. Joann Wilson, Housekeeping Supervisor.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Lora Ferguson was employed by Heartland Employment Services, dba Manor Care from June 27, 2007 until February 24, 2010 when she was discharged from employment. Ms. Ferguson held the position of full-time laundry aide and was paid by the hour. Her immediate supervisor was Joann Wilson.

The claimant was discharged based upon a final incident that took place on February 23, 2010. On that date the employer believed that the claimant should not have reported for scheduled work but should have instead called in sick. The employer concluded that because the claimant should have called in sick and had not done so, that she had not provided two hours' advanced notice of an impending absence and thus violated the company's call-in policies. Because the employer believed that the claimant had violated the call-in policy on February 23, 2010, it was determined her fourth Type C violation within a one-year period and subjected the claimant to discharge. Ms. Ferguson had been specifically instructed by the facility's human resource director that the claimant should personally contact her supervisor if the claimant was going to be absent and that the claimant should provide two hours' advance notice of any absence. Ms. Ferguson had been warned for failing to directly notify her employer of an impending absence on February 19, 2010. On that date the claimant had called a nursing supervisor and

reported her impending absence but had not directly spoken to her supervisor. Ms. Ferguson had received two other warnings for reasons not directly related to her termination on February 24, 2010.

The claimant had visited an emergency room on the evening of February 22, 2010 and had been released from treatment that evening at 8:30 p.m. Ms. Ferguson had been advised that she was suffering from a urinary tract infection and was provided a prescription to be filled the following day. Ms. Ferguson was provided a doctor's note stating that she had been discharged at 8:30 p.m. on February 22, 2010 and further stating: "May return to work Wednesday, 2/24/10."

After being released from the emergency room, Ms. Ferguson felt better and reported for scheduled work the following Tuesday, February 23, 2010 reporting for work at her regularly scheduled time. Ms. Ferguson indicated to her supervisor that the claimant would have to leave work in the afternoon to obtain her prescription. A further inquiry from the employer about the claimant's need to leave work in the afternoon resulted in Ms. Ferguson showing the doctor's slip to her supervisor. After reviewing the matter the supervisor and the facility's human resource director concluded that because the doctor's slip stated that the claimant "May return to work Wednesday, 2/24/10" that Ms. Ferguson was not released to return to work sooner and that she had failed to provide the required two hours' advanced notice that she could not work on that day, February 23, 2010 whereupon the claimant was sent home by the employer. The following day Ms. Ferguson was allowed to work until 1:00 p.m. in the afternoon and then was discharged because the final incident had caused her to have four Type C violations within a one-year period.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily conduct serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based upon such past acts. The termination of employment must be based upon a current act. See 871 IAC 24.32(8).

The evidence in this case establishes that Ms. Ferguson was discharged because her conduct in attempting to report for scheduled work on February 23, 2010 was considered inappropriate by the employer and categorized as a Type C violation and that because the claimant had received previous Type C violations, she was subject to discharge for accumulating four violations in a one-year period.

The question before the administrative law judge is whether Ms. Ferguson's conduct in attempting to report for scheduled work on the morning of February 23, 2010 was an intentional disregard of the employer's interests or standards of behavior that they had a reasonable right to expect. The claimant reported for work because she felt better and was scheduled to work that day. The claimant had not been told that she could not report to work by her physician or that she had a communicable type of ailment that would prohibit her from reporting. Ms. Ferguson understood that she could be absent on February 23, and her absence would be covered by the doctor's note but did not reasonably conclude that she was prohibited from reporting for work. When the claimant attempted to provide the employer's required two hours' advanced notice by directly telling her supervisor of the claimant's need to be off work for a period of time that afternoon to obtain her prescription, the employer inquired further. Upon determining that the claimant had authorization to be absent from work for medical reasons on February 23, the employer declined to allow the claimant to continue to work that morning. The employer not only sent the claimant home but also gave the claimant a Type C violation for attempting to report instead of providing notification that she could not report.

While the employer's decision not to allow the claimant to continue working that day may be understandable from a liability viewpoint, the fact remains that the claimant did not intentionally violate the employer's notification policy. Ms. Ferguson believed that she was well enough to report to work and authorized to do so. Ms. Ferguson did not intentionally violate the employer's notice rule. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated March 18, 2010, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice
Administrative Law Judge

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Decision Dated and Mailed

pjs/pjs