IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MARJORIE G REED
Claimant

GREAT RIVER MEDICAL GROUP
Employer

APPEAL NO. 08A-UI-05503-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/04/08 R: 04
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Quit
Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Great River Medical Group (employer) appealed a representative's June 2, 2008 decision (reference 01) that concluded Marjorie Reed (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 25, 2008. The claimant participated personally. The employer participated by Candyce Acklane, Owner, and Linda Reisenbigler, Medical Secretary. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on February 5, 2007, as a full-time medical assistant. The employer did not provide the claimant with a handbook. The claimant is given personal days as part of her benefit package. The employer reserves the right to deny a request for a day off but it never denied the claimant's requests. The employer cut the claimant's hours in January 2008, by changing her job title. The employer gave the claimant extra time off when her husband was ill and hospitalized in February 2008.

The claimant's son was to receive three prestigious academic awards from the University of Southern Mississippi. The awards were to be presented in April 2008. The claimant asked in December 2007, for the time off. The employer did not respond. The date was changed to the weekend of May 10, 2008. On May 1, 2008, the claimant requested May 9 and 12, 2008, so she could make the 12-hour drive there and back. The employer did not respond.

The claimant vented to the medical secretary that she might have to quit if the employer did not allow her the time off. The medical secretary told the employer that the claimant said she would quit if the employer did not give her the time off. On May 6, 2008, the employer met with the claimant. The claimant said May 9, 2008, might be her last day if the employer did not give her

the time off. The employer told the claimant she could have May 9, 2008, off but not May 12, 2008. The employer provided the claimant with a memo stating the claimant's request for time off was denied because she asked for too many days off that year and taking May 12, 2008, off would be a hardship to the business. The employer said it was accepting the claimant's resignation and her last day would be May 9, 2008. The claimant signed an acknowledgement at the employer's direction.

The claimant did not intend to quit. Continued work was not available for the claimant. The employer told the claimant that she could not work on May 7 and 8, 2008, but the employer paid her for those days.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant did not voluntarily quit work.

Iowa Code section 96.5-1 provides:

> An individual shall be disqualified for benefits:
>
> 1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant had no intention of leaving work. The employer mistook her words. The claimant did not voluntarily quit.

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). The claimant was understandably nervous about whether the employer would allow her the time off. She originally requested the time in December 2007, and the employer did not answer her request. The claimant said she might quit if they did not allow her to use the benefits of her employment. In response the employer stepped in and ended her employment on May 6, 2008. The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's June 2, 2008 decision (reference 01) is affirmed. 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/pjs