IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

PAULA J NOAH
Claimant

TPI IOWA LLC
Employer

APPEAL NO. 14O-UI-00108-H2

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/16/13
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 5, 2013, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued an in person hearing was held before Administrative Law Judge Lewis on August 13, 2013, in Des Moines, Iowa. Claimant participated with her spouse Billie Noah. The employer did not participate. Claimant's Exhibit A was entered and received into the record. Employer's Exhibit One was entered and received into the record.

Administrative Law Judge Lewis reopened the record for employer participation after it was discovered the notice was sent to an incorrect address. Hearing was set for September 16, 2013, and due notice was issued to the parties at the correct addresses. The employer responded to the hearing notice instructions but its witness, Danielle Williams, was not available at the number provided when Judge Lewis called to begin the hearing and did not participate. The claimant and her witnesses were available to participate but the decision is based upon the earlier record to avoid duplication of testimony. Claimant's Exhibit A and Employer's Exhibit One remained part of the record.

On September 20, 2013 Judge Lewis issued a decision that denied unemployment benefits to the claimant. On October 4, 2013 the claimant filed an appeal with the Employment Appeal Board. (EAB). The EAB remanded for a new hearing when the recording of the hearing of August 13, 2013 could not be located. The claimant asked for an in-person hearing. After due notice was issued an in-person hearing was scheduled to be held in Des Moines, Iowa at 3:00 p.m. on February 4, 2014. Danielle Williams on behalf of the employer indicated that the employer does not participate in hearings held in person due to time constraints. The claimant participated along with her witness Pamela Wells. Claimant's Exhibit A was entered and received into the record. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an assembler beginning on March 21, 2010 through June 16, 2013 when she was discharged. The employer discharged the claimant for allegedly leaving the plant without proper notification or permission from management.

The claimant was granted leave under the Family Medical Leave Act (FMLA) with an effective date of November 13, 2012. She used the leave when she suffered from the ill effects of her bi-polar disorder including panic attacks.

On June 15 the claimant was being written up by her supervisor, Alex Richardson. Mr. Richardson was writing the claimant up under the attendance policy for her missing work on May 26, 2012. The claimant had asked for time off that day to attend her daughter's high school graduation. The claimant was granted the day off. However, the employer learned later that the claimant only had one hour of vacation available to her when she took that day off. The claimant thought when her leave was approved for the day that meant she had enough vacation or PTO time to cover her absence. As the claimant tried to explain her position to Mr. Richardson he walked away from her and would not speak to her any longer about the issue. The claimant returned to her work station becoming increasingly upset over the write up. She told the Team Leader, Ricky R. that she was having a panic attack, unable to breathe and needed to leave for the day under her FMLA agreement. At no time did the claimant use profanity when speaking to anyone, including coworkers or management. In the past the claimant had always reported to the team leader when she was leaving. She had used 403 hours of FMLA and still had over fifty hours available to her. She had never been instructed in the past that only Mr. Richardson could give her permission to leave when she needed to use FMLA. While the claimant was upset, she did not threaten anyone with harm, nor did she give any indication she wanted to quit. She simply needed to leave because she was having a panic attack.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” When based on carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

The claimant had never been required to report specifically to Mr. Richardson that she needed to leave under her FMLA agreement. She had never been required to provide any medical documentation other than notice of her bi-weekly appointments. The evidence does not establish that the claimant intended to quit. She never said she was quitting. She told her team lead as she had many times in the past that she was leaving to use FMLA. Under these circumstances the administrative law judge cannot conclude that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. If the employer required that only Mr. Richardson was to give claimant permission to leave, the claimant should have been given fair notice of that requirement. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. Thus, benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The July 5, 2013, (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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Teresa K. Hillary
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs