IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JOYCE A REIDNER
Claimant

KEOKUK AREA HOSPITAL
Employer

APPEAL NO. 11A-UI-15486-LT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/30/11
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed an appeal from the November 29, 2011 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on January 3, 2012. Claimant participated. Employer participated through Human Resources Director Rhonda Schreck. Claimant's Exhibits A and B were admitted to the record.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer or if she was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an office clerk. Her last day of work was January 14, 2011. The employer considered her to be separated from the employment on April 5, 2011. Claimant's mother was seriously ill and needed 24-hour care. Her Family Medical Leave Act (FMLA) leave expired on April 18, 2011. She was unable to return to work and her mother was also under hospice care. Claimant spoke with Office Manager Bren Asbury on April 5 and Asbury told her, "Either you come back to work or you quit." Claimant called the human resources office and spoke to either Schreck or Louise Skow and said she had spoken to Asbury and said she knew she could not return to work that week. She was instructed to call Asbury and tell her she would not be returning to work. She did not ask for an extension of her leave and was not told it was an option available to her, even though the employer allows extensions of FMLA or other leave of up to six months as outlined in the supervisor's manual. The claimant was not a supervisor. Her mother passed away on May 29, 2011 and she contacted Asbury again and was told that her job was no longer available and they were not hiring for other positions. Asbury did not participate in the hearing.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for no disqualifying reason.

Iowa Code § 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.

871 IAC 24.26(21) provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> (21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

Iowa Code § 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.

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).

Because claimant contacted the employer about returning to work after her mother's death, there was not an intention to sever the employment relationship. Since there was unclear communication between claimant and Asbury about the status of the employment relationship, the issue must be resolved by an examination of witness credibility and burden of proof. Because most members of management are considerably more experienced in personnel issues and operate from a position of authority over a subordinate employee, it is reasonably implied that the ability to communicate clearly is extended to discussions about employment status. Because Asbury told claimant on April 5 to either return to work the following week or resign, the claimant's forced resignation was a discharge during an approved leave of absence period and the burden of proof falls to the employer.

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).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, 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. Inasmuch as claimant could not return at the end of the FMLA period and the employer did not advise her she could apply for an extension, her failure to do so was not an indication that claimant was separated from the employment for any disqualifying reason. Benefits are allowed.

DECISION:

The November 29, 2011 (reference 01) decision is affirmed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw