IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

UNIQUE SMITH Claimant **FOCUS SERVICES LLC** Employer	**APPEAL 19A-UI-08984-CL-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 10/20/19** **Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

On November 14, 2019, the claimant filed an appeal from the November 5, 2019, (reference 01) unemployment insurance decision that denied benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on December 10, 2019. Claimant participated. Employer participated through human resources assistant Angie Grieves and was represented by Karina Holt.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on March 7, 2019. Claimant last worked as a full-time call center representative. Claimant was separated from employment on June 15, 2019, when she was terminated.

Claimant was planning a move to Illinois, but she did not have housing or a job secured. She had not given her employer a notice of resignation.

On Monday, June 10, 2019, claimant requested to have time off on June 19 and 20, 2019, so she could attend a hearing in Illinois regarding housing assistance. Claimant offered to work on June 22 and June 23, 2019, to make up for the time missed.

On June 15, 2019, claimant's supervisor, Samantha Medina, called claimant and stated that her time off request had been denied. Medina told claimant that if she was not planning to come in on June 19 and 20, then she would be taken off the schedule effective immediately. Claimant indicated she was not coming in on June 19 and 20, 2019, and interpreted the conversation to mean she was terminated.

On June 17, 2019, an employee with employer's workforce department submitted a document to its human resource department stating claimant resigned because she was moving.

Claimant had never been previously disciplined for attendance.

Claimant moved to Illinois on approximately July 4, 2019.

REASONING AND CONCLUSIONS OF LAW:

In this case, claimant asserts she was discharged while employer asserts claimant resigned to move to Illinois. It is my duty, as the administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

As reflected in the findings of fact above, the administrative law judge finds the claimant's version of events to be more credible than the employer's because claimant was a firsthand witness to the interactions in question, while employer is relying on documentation only and does not even have secondhand information from Samantha Medina, the supervisor allegedly involved in the separation from employment.

Because the administrative law judge finds claimant to be the more credible witness, this case will be analyzed as a discharge as opposed to a resignation.

A claimant is disqualified from receiving unemployment benefits if the employer discharged the individual for misconduct in connection with the claimant's employment. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. 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. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Iowa Admin. Code r. 871-24.32(7) provides:

> (7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be

> considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190 (Iowa 1984).

In order to show misconduct due to absenteeism, the employer must establish the claimant had excessive absences that were unexcused. Thus, the first step in the analysis is to determine whether the absences were unexcused. The requirement of "unexcused" can be satisfied in two ways. An absence can be unexcused either because it was not for "reasonable grounds," *Higgins* at 191, or because it was not "properly reported," holding excused absences are those "with appropriate notice." *Cosper* at 10. Absences due to properly reported illness are excused, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. Iowa Admin. Code r. 871-24.32(7); *Cosper*, supra; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007). Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit*, supra. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins, supra.* However, a good faith inability to obtain childcare for a sick infant may be excused. *McCourtney v. Imprimis Tech., Inc.*, 465 N.W.2d 721 (Minn. Ct. App. 1991). The second step in the analysis is to determine whether the unexcused absences were excessive. The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins* at 192.

In this case, employer did not establish claimant committed a current act of misconduct as she was discharged prior to missing work on June 19 and 20, 2019. Furthermore, claimant had never been previously disciplined regarding attendance and was not aware her job could be terminated for missing work on those two dates.

Employer failed to establish claimant was terminated for misconduct.

DECISION:

The November 5, 2019, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Christine A. Louis
Administrative Law Judge
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December 13, 2019
Decision Dated and Mailed

cal/scn