IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JANET MARTINEZ
Claimant

KPTOO INC
MCDONALD'S
Employer

APPEAL NO: 09A-UI-05856-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/15/09
Claimant: Appellant (5)

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Janet Martinez (claimant)) appealed a representative's April 13, 2009 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from KPTOO, Inc. / McDonald's (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 12, 2009. The claimant participated in the hearing. Sara Anderson appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 13, 2008. She worked part time (approximately 25 hours per week) as a crew member in the employer's restaurant. Her last day of work was December 2, 2008.

The claimant had been a no-call/no-show on December 1. She reported for work and did work on December 2; she was given a warning indicating that further unexcused absences could result in termination. She had previously been given verbal warnings for at least two prior no-call/no-shows, at least one other called-in absence, and several tardies. She was a no-call/no-show for her scheduled work on December 3 and December 5. On December 6 Ms. Anderson, the restaurant manager, contacted the claimant to inquire why she had not been at work and to advise her that she no longer had a job because of the additional no-call/no-shows. The employer considered the claimant a voluntary quit by job abandonment due to the three no-call/no-shows.

The reason the claimant missed work these days in December was that her child had been taken into the custody of DHS. As a result, the claimant had become engrossed in pursuing legal avenues to seek to regain custody of her child, and also had become very depressed. Since the first of the year she has regained custody of her child and has resolved many of her personal issues that were interfering with her working as scheduled with the employer.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

Rule 871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The employer asserted that the claimant was not discharged but that she quit by being a three-day no-call/no-show. The intent to quit can be inferred in certain circumstances. For example, a sequential three-day no-call/no-show in violation of company rule is considered to be a voluntary quit. 871 IAC 24.25(4). The employer's policy or application of its policy does not comply with this rule, however, as the claimant was only a two-day sequential no-call/no-show. Since the employer's policy does not satisfy the rule as far as what can be deemed a voluntary quit under Iowa Code Chapter 96, the claimant's actions did not demonstrate the intent to sever the employment relationship necessary to treat the separation as a "voluntary quit" for unemployment insurance purposes. The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code § 96.6-2. As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance. 871 IAC 24.26(21).

The issue in this case is then whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, 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 is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason the employer effectively discharged the claimant was her absenteeism. Excessive and unexcused absenteeism can constitute misconduct. 871 IAC 24.32(7). Absences due to issues that are of purely personal responsibility are not excusable. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984); Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984). The claimant's final absences were not properly reported as due to illness or other reasonable grounds, and were not excused. The claimant had previously been warned that future absences could result in termination. Higgins, supra. The employer discharged the claimant for reasons amounting to work-connected misconduct. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's April 13, 2009 decision (reference 01) is affirmed as modified with no effect on the parties. The claimant did not voluntarily quit but the employer did discharge the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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