IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MARIA I VARGAS ESTRADA
Claimant

WEST LIBERTY FOODS
Employer

APPEAL NO. 08A-UI-06503-CT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/15/08 R: 03
Claimant: Appellant (2)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Maria Estrada filed an appeal from a representative's decision dated July 14, 2008, reference 01, which denied benefits based on her separation from West Liberty Foods. After due notice was issued, a hearing was held by telephone on July 30, 2008. Ms. Estrada participated personally and was represented by John Allen, Attorney at Law. Exhibits A and B were admitted on Ms. Estrada's behalf. The employer participated by Jean Spiesz, Human Resources Manager. Exhibits sent by the employer were not received in sufficient time to make copies available to Ms. Estrada prior to the hearing. Therefore, the documents were not admitted.

ISSUE:

At issue in this matter is whether Ms. Estrada was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Estrada began working for West Liberty Foods on October 1, 2007. She was last employed full time as a boxer. Prior to May 19, she made several visits to the company nurse regarding shoulder pain she felt was caused by the employment. On May 19, Ms. Estrada presented the employer with a statement from her doctor indicating that she would need to be off work from May 19 through June 16, 2008. The doctor indicated she was undergoing physical therapy and was not able to perform her job without significant pain.

On May 21, the employer requested that Ms. Estrada sign an authorization allowing the employer to contact her doctor. The employer wanted to determine if there was other work she could perform that would not aggravate her shoulder. She declined to sign the form because it was not in Spanish and she is unable to read English. Although the employer prepared a form in Spanish for her to sign, Ms. Estrada left the workplace before it could be presented to her. She returned to the workplace to meet with the employer on May 23, but the Spanish version of the release was not presented to her at that time. Ms. Estrada was told on May 23 that she did

not have any further leave time available and that her continued absence from work was not authorized.

Ms. Estrada was next scheduled to work May 25. She did not report for work or contact the employer on May 25, 26, or 27. The employer mailed her a letter on June 12 indicating she no longer had employment with West Liberty Foods. The letter advised that her worker's compensation claim was being denied because of her refusal to sign an authorization form to allow the employer to contact her personal doctor. The letter further advised that Ms. Estrada did not have any available leave to cover her recent absences and that she had exhausted all attendance occurrences allowed under the employer's policy. The letter concluded by stating that her employment was being ended due to her violation of the attendance policy. The letter did not make reference to a three-day "no-call/no-show."

Ms. Estrada attempted to return to work at the conclusion of the period for which her doctor advised her to remain off work. The employer reiterated at that time that she no longer had employment with West Liberty Foods.

REASONING AND CONCLUSIONS OF LAW:

The employer contended that Ms. Estrada quit her employment when she failed to report for work or contact the employer for three consecutive days. Under the employer's policy, the failure to report for three days would be construed a voluntary quit. Ms. Estrada did not call on or after May 25 because she had already advised the employer that she would be absent through June 18, 2008. Although the employer may not have authorized the absences, the fact remains that the employer was on notice of Ms. Estrada's intention to be absent as of May 25. Therefore, the administrative law judge concludes that there was no failure to report the absences.

The letter advising Ms. Estrada of her discharge makes no mention of her being absent for three days without notice. It reminded her that she did not have any available leave time to cover her recent absences. The letter then stated that she had used all available occurrences under the attendance policy. The letter concluded by stating that the employment was ending due to a violation of the attendance policy. It is clear from the letter that the attendance violation referred to was the fact that Ms. Estrada had used all of her attendance points, not that she had been absent for three days without notice. For the reasons stated herein, the administrative law judge concludes that Ms. Estrada's separation is not deemed a voluntary quit as provided by 871 IAC 24.25(4). Because the separation was initiated by the employer, it is considered a discharge.

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving benefits if she was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences. The administrative law judge is not bound by an employer's designation of an absence as unexcused. It is concluded that Ms. Estrada's absences beginning May 25 are excused. They were for reasonable cause, pain due to a shoulder injury, and were properly reported. Although she did not call the employer each day of her absence, the employer had notice she would be absent for an extended period.

Excused absences may not form the basis of a misconduct disqualification, regardless of how excessive. While the employer may have had good cause to discharge Ms. Estrada, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated July 14, 2008, reference 01, is hereby reversed. Ms. Estrada was discharged by West Liberty Foods but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

_____
Carolyn F. Coleman
Administrative Law Judge

_____
Decision Dated and Mailed

cfc/css