IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

SHARON E ANDREWS
Claimant

GOODWILL INDUSTRIES OF CENTRAL IOWA INC
Employer

APPEAL NO. 08A-UI-06512-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/01/08 R: 02
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Leaving
Section 96.4-3 – Able and Available
Section 96.7-2-a(2) – Charges Against Employer's Account

STATEMENT OF THE CASE:

Goodwill Industries of Central Iowa, Inc. (employer) appealed a representative's July 7, 2008 decision (reference 02) that concluded Sharon E. Andrews (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 7, 2008. The claimant participated in the hearing. Kathy Crooks appeared on the employer's behalf and presented testimony from two other witnesses, Angie Coleman and Lisa Wilson. 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.

ISSUES:

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?

Is the claimant able and available for work?

Is the employer's account subject to charge?

FINDINGS OF FACT:

The claimant started working for the employer on February 13, 2008. She worked about 32 hours per week as a store clerk in the employer's Urbandale, Iowa store. Her last day of work was June 4, 2008.

The claimant had been having increasing pain and on or about May 20 went to her doctor, who diagnosed her with fibromyalgia. She returned to work on May 21 and informed the employer of this diagnosis and that her doctor had indicated that she could no longer do much of the kind of work she did for the employer such as lifting of furniture and long periods of standing as it

aggravated her condition. Therefore, she advised the employer that she was not sure if she would be able to continue in her employment.

On about May 27 the claimant brought in a note from her doctor indicating that she could only work four five-hour shifts per week and that she was to do no lifting, climbing, or extended standing. She indicated a willingness to the employer to continue working indefinitely on this basis, but she was advised that the employer could not allow her to continue in her employment indefinitely with those restrictions, as she could not perform all the necessary job function. The employer advised her that it was treating her announcement of her diagnosis and restrictions as a quit and that June 4 would be her last day, although the employer complied with her restrictions for the remainder of her employment.

The claimant established an unemployment insurance benefit year effective June 1, 2008. During her base period, the claimant primarily worked part-time hours, between 20 and 30 hours per week. She is currently seeking part-time employment consistent with her doctor's medical restrictions and has found and applied for positions that would comply with those restrictions.

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. The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit.[1] 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).

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[1] Even if the separation is treated as a quit, it would be for a good cause attributable to the employer. Leaving employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician with notice to the employer is recognized as grounds that are good cause for quitting. Iowa Code § 96.5-1-d. For the quit to be attributable to the employer, factors or circumstances directly connected with the employment must either cause or aggravate the claimant's condition so as to make it impossible for the employee to continue in employment; the claimant "must present competent evidence showing adequate health reasons to justify termination [and] before quitting [must] have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated." 871 IAC 24.26(6)b. The claimant has satisfied these requirements. The employer was unable or unwilling to provide reasonable accommodation in order to retain the claimant's employment. "Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). Treated as a quit, benefits are allowed, if the claimant is otherwise eligible.

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 that 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 that 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 inability to continue to perform the essential functions of the job due to her medical restrictions. 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.

As the claimant's current work restrictions are for her to work fewer hours than she had originally been working for the employer, an issue must be addressed as to whether the claimant is sufficiently able and available for work to be eligible for unemployment insurance benefits. With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, available for work, and earnestly and actively seeking work. Iowa Code § 96.4-3. To be found able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." Sierra v. Employment Appeal Board, 508 N.W.2d 719, 721 (Iowa 1993); Geiken v. Lutheran Home for the Aged, 468 N.W.2d 223 (Iowa 1991); 871 IAC 24.22(1). As to a restriction for part-time hours, "if an individual is available to the same degree and to the same extent as when the wage credits were accrued, the individual meets the eligibility requirements of the law." The claimant's base period wage credits were earned working hours compatible with her restrictions. The claimant has demonstrated that she is able to work in some gainful employment to the same degree and to the same extent as her base period. Benefits are allowed, if the claimant is otherwise eligible.

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code § 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code § 96.19-3. The claimant's base period began January 1, 2007 and ended December 31, 2007. The employer did not employ the claimant during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

DECISION:

The representative's July 7, 2008 decision (reference 02) is affirmed. The claimant did not voluntarily quit; the employer did discharge the claimant, but not for disqualifying reasons. She is able and available for work. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The employer's account is not subject to charge in the current benefit year.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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