IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

TAURIE M LITTLE
Claimant

YELLOWBOOK INC
Employer

APPEAL NO. 13A-UI-12320-HT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/06/13
Claimant: Respondent (1-R)

Section 96.5(1) – Quit
Section 96.5(2) – Discharge

STATEMENT OF THE CASE:

The employer, Yellowbook, filed an appeal from a decision dated October 24, 2013, reference 01. The decision allowed benefits to the claimant, Taurie Little. After due notice was issued a hearing was held by telephone conference call on November 25, 2013. The claimant participated on her own behalf. The employer participated by Senior Employee Relations Manager Christi Dalecky and Marketing Manager Travis Wiliming.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer or was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Taurie Little was employed by Yellowbook from January 7, 2013 until September 25, 2013 as a full-time client services representative (CSR). Since her hire date she had missed nearly 120 days of work and received a final written warning for absenteeism on September 23, 2013. Her absences were either due to personal illness or sick children.

On September 25, 2013, she was at work while she was ill. Assistant Marking Manager Corey Wood communicated with Marketing Manager Travis Wilming and they agreed to let her go home at noon and she could make up the missed time the next day.

Before noon another manager, Norah Conzene talked with the claimant because she had to put a client on hold while she threw up. It was around 10:30 a.m. and he told her to go home and that she would "not be welcome back." As he was higher up the managerial chain than Mr. Wood the claimant assumed he had the final word and assumed she had been fired. The employer assumed she had quit because she stopped coming into to work her next two schedule shifts.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

There is no evidence the claimant was quitting. She thought because she was being sent home at 10:30 a.m. by a manager higher in authority than Mr. Wood, she was being fired.

Iowa Code section 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.

The employer maintained the claimant quit because she walked out and said to Mr. Wood it was "nice working" with him. The employer witnesses knew nothing about the conversation she allegedly had with Mr. Conzene. Both he and Mr. Wood still work for Yellowbook but neither one testified at the hearing.

If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety, 2*40 N.W.2d 682 (Iowa 1976). The administrative law judge concludes that the hearsay evidence provided by the employer is not more

persuasive than the claimant's denial of such conduct. The employer has not carried its burden of proof to rebut the claimant's testimony she was told she was not welcome to come back by Mr. Conzene.

The employer has not met its burden of proof to establish misconduct nor has it provided convincing testimony the claimant quit when work was still available to her. Disqualification may not be imposed.

The issue of whether the claimant is able and available for work given her extensive absences due to personal illness or sick children had not been determined.

DECISION:

The representative's decision of October 24, 2013, reference 01, is affirmed. Taurie Little is qualified for benefits, provided she is otherwise eligible.

The matter of whether the claimant is able and available for work given her extensive absences due to personal illness or sick children is remanded to the Agency for determination.

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Bonny G. Hendricksmeyer
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs