IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ANA M ARQUETA
Claimant

DALLAS COUNTY HOSPITAL
Employer

APPEAL NO. 12A-UI-04875-HT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/18/12
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Ana Arqueta, filed an appeal from a decision dated April 19, 2012, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on June 13, 2012 and concluded on July 17, 2012.

The claimant participated on her own behalf and was represented by Nicholas Platt and Patricia Vargas acted as interpreter for the hearing on June 13 and Steven Rhodes acted as interpreter for the July 17, 2012, hearing. The employer, Dallas County Hospital (DCH), participated by Human Resources Manager Sherry Smith, Corporate Responsibility Manager Amy Piepmeier, and Purchasing Manager Julie Smith, and was represented by Becky Knutson. Exhibits One, Two, Three, Four, Five, and Six were admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Ana Arqueta was employed by DCH from June 1, 2007 until January 17, 2012 as a full-time environmental services worker. She had received a copy of the employee handbook, which set out the attendance and disciplinary policies. Ms. Arqueta received a documented verbal warning on September 30, 2011, a written warning on October 27, and a final written warning on December 27, 2011 for absenteeism. The warnings also mentioned the failure to properly notify the nurses' station of the absence. This last part is necessary because the environmental services staff starts work before the shift manager for that department would come on duty and the facility needed to have the information about which housekeeping employees would not be at work.

In August 2011, the claimant informed DCH she was having pain in her arm, but nothing was said that it was, or could be, work-related. On January 13 and 16, 2012, Ms. Arqueta again did not properly report her absence when she went to a doctor about the pain in her arm. On January 16, 2012, she slid a note under the office door of Purchasing Manager Julie Smith. It stated she wanted to take therapy from Kate but wanted to know if the employer would pay for it. It did not say she would not be at work that day, nor did she notify the nurses' station as required.

She could have talked with Ms. Smith on Friday, January 13, 2012, when the doctor first gave her the note, but she did not. She could have waited less than half an hour on January 16, 2012, to discuss the matter with Ms. Smith when she came on duty but did not. The note from the doctor only said the pain might be work-related and should be evaluated, it did not impose any restrictions on her activities or excuse her from work at all.

She did not come in to work on January 17, 2012, because she believed she was fired as soon as she reported a work-related injury. She thought this because she was the only Hispanic in the environmental services department, though could not explain what about that situation caused her to believe the employer would fire her as soon as she reported an injury. But she had reported the pain in her arm some time earlier and had not received any disciplinary action.

The claimant had been absent for three days without properly notifying the employer and was discharged by letter on January 17, 2012.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 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 claimant had been advised her job was in jeopardy as a result of her unexcused, improperly reported absenteeism. In spite of three warnings, she still failed to properly report her absences as set out in the warnings. Ms. Arqueta maintained she did not understand English well enough to be fully aware of the contents of the warnings. DCH has an interpreter available, but the claimant never asked for one to either interpret the warnings or the employee manual. Her son, however, can read and speak both English and Spanish and it does not appear she asked him to read and explain these documents to her.

Just as Ms. Arqueta believed she would be automatically fired as soon as the employer knew a doctor has stated her arm pain might be work-related, she also believed she would be fired if she asked for an interpreter on any of the disciplinary occasions. This was not based on anything anyone had said or done at DCH, but from experiences other people had had with other employers.

The administrative law judge cannot give much weight to the claimant's assertion she did not come to work on January 17, 2012, because she assumed she had been fired. This is inconsistent with her assertion she was waiting for the employer to respond by mail to her request for physical therapy. It also does not comport with her belief she would be fired as soon as the employer learned her arm pain might be work related. If this were true, then there is no explanation as to why she would believe this at the same time as she was expecting a response from the employer regarding her request for physical therapy.

The record establishes the claimant was discharged for continued unexcused absenteeism, failure to properly report her absences to the nurses' station as required, and failure to adequately communicate with her supervisor about these same issues. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of April 19, 2012, reference 01, is affirmed. Ana Arqueta is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible.

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Bonny G. Hendricksmeyer
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw