IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JEAN A SCIGLIANO
Claimant

CATHOLIC HEALTH INITIATIVES
Employer

APPEAL NO. 12A-UI-14386-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/04/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jean Scigliano (claimant) appealed a representative's December 3, 2012 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Catholic Health Initiatives (employer) for insubordination in connection with her work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 9, 2013. The claimant participated personally. The employer participated by Doug Willyard, Human Resources Business Partner, and Theresa Bringleson, Medical Eligibility Counseling Services Manager. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 16, 1990, as a full-time resource case worker. The handbook was available on line but the claimant does not remember ever accessing it. The employer did not issue the claimant any warnings during her employment. The employer announced that a new company, Conifer, would be managing the employer's work processes starting January 1, 2013. The claimant understood that Conifer would be her new employer starting January 1, 2013. In mid-October 2012, her manager told her she should begin to attend training with Conifer. The claimant attended three days of training in November 2012, in which the company provided orientation instruction.

On November 2, 2012, the claimant contacted her manager and stated her intent to retire on December 31, 2012. The claimant stated that she did not intend to work for Conifer on January 1, 2013. The manager told the claimant she did not have to attend training on November 7, 2012. Based on the manager's statements, the claimant scheduled patient appointments.

On November 6, 2012, the manager sent the claimant a follow-up e-mail. She asked the claimant to let her know if she was planning to attend the training on November 7, 2012. The claimant immediately responded by e-mail that she would not be attending. The manager responded by email, “Thank you, Jean. Have a great rest of your day”.

On November 7, 2012, at 8:00 a.m. the Human Resource Business Partner called the claimant into his office. The claimant had never met this person before. He told the claimant that she needed to attend the training session at 1:00 p.m. that afternoon. The claimant attempted to explain the conversations with her manager and her appointments with her patients. The Human Resource Business Partner told the claimant that her patients were “irrelevant” and that failure to attend would be insubordination. The claimant was confused by the disparity of information from her manager and the Human Resource Business Partner. He told her she would be terminated if she did not attend the training. The Human Resource Business Partner was unaware of the permission issued by the manager. The claimant did not attend the training because she made other arrangements with her manager and had appointments with patients. The employer terminated the claimant on November 8, 2012.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa App. 1985). In this case it is reasonable for the employer to want its employees to follow instructions when a new employer is going to take over its business. Of course if the claimant is not going to work for that business, perhaps the employer could have discussed with the claimant the reasons she should attend the training. On the other hand, the claimant had her own reasons for not following the instructions. Her manager led her to believe she had an option of attending the training. She made her choice to not attend the meeting. Later a man she did not know told her she would be terminated for making a choice that her manager allowed her to make.

It appears that there was a failure to communicate and that failure belongs to the manager. At the hearing she testified that she did not remember the events and she did not review the e-mails she sent to the claimant. The claimant was terminated because she relied on the manager's instructions. It is unfortunate when a long-term employee is terminated due to a communication error. The claimant's actions do not rise to the level of misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's December 3, 2012 decision (reference 01) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs