IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JESSICA L CHARLTON
Claimant

AMERIC INN OTTUMWA
Employer

APPEAL NO. 09A-UI-03389-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/25/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jessica Charlton (claimant) appealed a representative's February 25, 2009 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Americ Inn of Ottumwa (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 30, 2009. The claimant participated personally. The employer participated by Sarah Hartley, General Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

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 June 12, 2007, as a part-time front desk night auditor. The claimant was absent from work due to a diagnosed stress and anxiety condition. She always properly reported her absences due to illness or injury. The employer issued the claimant a warning in August 2008, for her absences.

The claimant was absent due to properly reported illness from January 19 through 26, 2009. The claimant provided a doctor's note for the entire period. The employer issued the claimant a written warning on January 21, 2009, and would not allow the claimant to return to work until the claimant's doctor signed a document stating the claimant would never be absent again for stress or anxiety. The physician refused.

Then on February 6, 2009, the employer wanted the claimant to sign the warning stating she would not be absent again. The claimant asked the employer if she would be terminated for not signing. The employer was not clear with its answer. The employer knew the claimant suffered from stress and anxiety issues. It told the claimant she could return to work on February 9, 2009, if she signed the document.

On February 8, 2009, the employer told the claimant she was terminated for not signing the document. The employer testified the claimant quit for not appearing for work on February 9, 2009.

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.

871 IAC 24.32(8) provides:

> (8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident of

absence was a properly reported illness which occurred in January 2009. The claimant's absence does not amount to job misconduct because it was properly reported. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

DECISION:

The representative's February 25, 2009 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/css