IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JENNIFER L JASPER
Claimant

HILLCREST FAMILY SERVICES
Employer

APPEAL NO: 13A-UI-11940-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09/22/13
Claimant: Respondent (5)

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Hillcrest Family Services (employer) appealed a representative's October 16, 2013 decision (reference 01) that concluded Jennifer L. Jasper (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 18, 2013. A review of the Appeals Section's conference call system indicates that the claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing.. Shannon Hagensten appeared on the employer's behalf. 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.

ISSUE:

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?

OUTCOME:

Modified with no effect on the parties. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on February 20, 2012. She worked as a student life associate in the employer's adolescent group home. Originally she had worked full time on the second shift. On May 2 the claimant tendered a "resignation letter" indicating that after May 4 she no longer wished to continue in her regular full-time position, but indicating that she wished to become an "on-call" employee. The employer allowed her to switch her status to "on-call." Based upon her hourly wage, the claimant continued to work around 40 hours per week, but based on a varying schedule rather than a set schedule. Her last day of work was September 12, 2013.

On September 12 the claimant was working a shift when she was informed that when she completed her shift that day that she was being removed from the "on-call" list and would no longer be given any hours. The reason the employer determined to do this was because the employer concluded that the claimant was not properly following the employer's procedures regarding taking smoke breaks or the model for properly dealing with clients with emotional behaviors. The employer could not provide any details a far as what specifically was asserted to have occurred, including when the claimant had done something to violate these expectation.

Having been told that she would have no further work with the employer after that day, the claimant then walked off her shift before the end of the shift. The employer therefore asserts that she voluntarily quit her employment on September 12, 2013.

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 voluntarily quit by walking off her shift before the end of the shift on September 12. The claimant did not have the intent to sever the employment relationship necessary to treat the separation as a "voluntary quit" for unemployment insurance purposes; she did not have the option to continue her employment after September 12. By indicating that the claimant would be "removed from the on-call list" and informing her that she would no longer be scheduled for any hours, the employer had effectively ended the claimant's employment. The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code § 96.6-2. At worst, by leaving before the end of the shift the claimant could be deemed to have "quit" in advance of an announced layoff, so the theoretical disqualification period would be from the last day worked to the date of the scheduled layoff. 871 IAC 24.25(40). The "gap" between the "quit" and the announced ending of her employment was less than one day, and therefore not of any actual effect on the claimant's eligibility.

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). 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 which 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 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. 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 by removing her from the on-call list and advising her she would no longer scheduled for any hours was a general assertion that she was violating the employer's procedures regarding smoke breaks and policies for dealing with clients. Conduct asserted to be disqualifying misconduct must be both specific and current. *Greene v. Employment Appeal Board*, 426 N.W.2d 659 (Iowa App. 1988); *West v. Employment Appeal Board*, 489 N.W.2d 731 (Iowa 1992). A mere allegation of misconduct without corroboration is not sufficient to result in disqualification. 871 IAC 24.32(9). 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.

DECISION:

The representative's October 16, 2013 decision (reference 01) is modified with no effect on the parties. The claimant did not voluntarily quit and the employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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