IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

BUFFY A RUTLEDGE
Claimant

DOLGENCORP LLC
Employer

APPEAL NO. 19A-UI-00248-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/09/18
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Dolgencorp (employer) appealed a representative's December 31, 2018, decision (reference 01) that concluded Buffy Rutledge (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 25, 2019. The claimant provided a telephone number for the hearing but she could not be reached at that number and, therefore, did not participate. The employer participated by Adam Vice, Store Manager. Exhibit D-1 was received into evidence. The employer offered and Exhibit 1 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: Ms. Rutledge was hired on August 9, 2018, as a part-time key carrier. The employer has a handbook. It did not issue Ms. Rutledge any warnings during her employment. Mr. Vice thought Ms. Rutledge was one of his better employees.

Ms. Rutledge and Mr. Vice talked about Ms. Rutledge's transfer from the Toledo, Iowa, store to the Marshalltown, Iowa, store six weeks before Ms. Rutledge's separation. Ms. Rutledge's children and husband were in Marshalltown, Iowa. Mr. Vice mistakenly thought Ms. Rutledge did not want to transfer until 2019, and did not arrange for a transfer.

At 9:27 a.m., on November 25, 2018, Ms. Rutledge sent a text to Mr. Vice saying she was at urgent care with her child. The medical staff wanted her to take the child to the hospital. She informed Mr. Vice she would not be at work for her shift starting at 2:00 p.m. Mr. Vice did not respond until after noon and asked her if she had the number of a co-worker. Ms. Rutledge said she was at the hospital but would call the co-worker. At 1:28 p.m., on November 25, 2018, Mr. Vice told Ms. Rutledge she still needed to come to work. Ms. Rutledge immediately

responded that she did not know if she could do that because her child might be admitted and, on that day, she was a single parent.

Mr. Vice said that he understood but asked if anyone else could help her. Ms. Rutledge told him to write her up but she would not be at work. Mr. Vice said he understood that this was a priority but "if and or when you get back tonight. If you could still come in then, would you?" The claimant said the child was being admitted and she would let Mr. Vice know.

At 6:18 p.m. on November 25, 2018, the claimant sent a text to Mr. Vice saying that he was going to have to take her off the schedule, she was going to have to quit, or he was going to have to transfer her that week. She said her child was still in the hospital, she had had been homeless for three weeks but now had a place in Marshalltown, Iowa, and did not have a way to get to Toledo, Iowa. Because of these things she would not be at work that day. She sent the text after getting some sleep after going two days with no sleep.

Mr. Vice responded to her at 4:59 a.m. on November 26, 2018, "So you can't even bring your keys in to us?" Ms. Rutledge arranged to give Mr. Vice the keys that day. The employer separated Ms. Rutledge from employment because she did not appear for work on November 25 and 26, 2018.

The claimant filed for unemployment insurance benefits with an effective date of December 9, 2018. The employer provided the name and number of Adam Vice as the person who would participate in the fact-finding interview on December 27, 2018. The fact finder called Mr. Vice but he was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer did not respond to the message until two hours after the time set for the interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant did not voluntarily quit work.

Iowa Code section 96.5(1) provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). Even though the claimant used the word "quit", her text did not imply that she intended to leave work. Her text said she could not be at work "that day". She did not give an intention of not being at work longer than one day. This text was sent by the claimant after a day where the claimant said she had not slept for two days and her child was very ill. After she reported her absence and was dealing with family issues, Mr. Vice continued to infringe on her time by sending her at least nine texts. Therefore, the separation must be analyzed as involuntary.

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, regardless of the source of the individual's wage credits:
>
> 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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). The incidents of absence November 25 and 26, 2018, were properly reported. The claimant's absence when her child was hospitalized cannot be considered misconduct. A parent's presence with their hospitalized child has no wrongful intent. The employer has the burden of proof to show misconduct. The employer has not provided sufficient evidence that the claimant's absences were not properly reported or unexcused. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's December 31, 2018, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs