IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

AMBER M DYKSTRA
Claimant

VERMEER MANUFACTURING COMPANY
Employer

APPEAL NO. 09A-UI-06758-SWT

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 11/23/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 29, 2009, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on May 28, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Cornie Van Walbeek participated in the hearing on behalf of the employer. Exhibit One was admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a material handler from August 20, 2007, to January 22, 2009. The employer offered employees an opportunity to take a voluntary layoff in January 2009 due to a slowdown in business. The claimant was informed and understood that under the employer's work rules, failing to report back to work after the layoff period expired was deemed a voluntary quit.

The claimant requested and was given a nine-week voluntary layoff from January 26 through March 27, 2009. This meant that she was supposed to return to work on March 30, 2009. The layoff form states that failing to report back to work after the layoff period expired would constitute termination of her employment.

Because of information written on the layoff form by the payroll department, the claimant thought she was scheduled to return from her layoff April 6, 2009. She called the human resources director, Cornie Van Walbeek, at about 10:00 a.m. on March 30, to verify her return to work date. Van Walbeek said that she should have reported to work at 6:00 a.m. that morning and the employer would have to consider whether she would be allowed to come back to work. The next day, Van Walbeek informed the claimant that the employer was going to enforce the voluntary layoff rules and she was terminated because she did not return to work on March 30.

The claimant never intended to quit her job and intended to return to work after her leave expired. If Van Walbeek would have allowed it, she would have reported to work on March 30.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. I believe the claimant's testimony that she did not deliberately fail to report to work after the layoff expired but that she was confused and believed she was not to work until the next week. She never intended to quit her job. The separation must be treated as a discharge.

The next issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

No willful and substantial misconduct has been proven in this case. At most, the claimant made a good-faith error in judgment in not reporting on March 30. The employer presented no evidence that the claimant had committed or been disciplined for any similar conduct.

DECISION:

The unemployment insurance decision dated April 29, 2009, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw