IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

ASHLEY BRADLEY Claimant **DUBUQUE COMMUNITY SCHOOL DISTRICT** Employer	**APPEAL 20A-UI-14492-DZ-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 04/12/20** **Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.4 (3) – Able to and Available for Work

STATEMENT OF THE CASE:

Ashley Bradley, the claimant/appellant, filed an appeal from the October 26, 2020, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on January 11, 2021. Ms. Bradley participated and testified. The employer participated through Mindy Klein, payroll specialist. Claimant's Exhibit A and Employer's Exhibit 1 were admitted into evidence.

ISSUE:

Was Ms. Bradley's separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Bradley began working for the employer on August 22, 2019. She worked as a full-time paraprofessional. Her last day at work was December 2, 2019. She was discharged on February 12, 2020.

On her first day of employment, Ms. Bradley submitted a written request for maternity leave from January 1, 2020 through approximately February 13, 2020. Ms. Bradley was a probationary employee at the time. The employer's policy provides that newly hired employees are on probationary status for 90 working days and employees on probationary status who are absent without prior approval of an administrator are subject to disciplinary action or termination of their employment. The policy also provides that paraprofessionals are allowed ten personal illness days and two personal days per school year.

On September 27, 2019, the employer informed Ms. Bradley in a letter that her request for maternity leave was granted and that if she began maternity leave on January 1, 2020, her expected due date, her maximum six calendar week maternity leave would extend through

February 11, 2020. The employer also informed Ms. Bradley that her doctor must submit the specific, enclosed release to work form in order for her to return to work. Finally, the employer asked Ms. Bradley to inform it of her actual delivery date immediately after her baby was born.

On October 16, the employer informed Ms. Bradley via letter that she had used nine of her ten personal illness days and one of her two personal days for the school year. The employer cautioned Ms. Bradley that, with the exception of her upcoming maternity leave, absences that exceeded her allotted ten sick days and two personal days may not been approved by an administrator, which could result in disciplinary action or termination of her employment. Ms. Bradley acknowledged receiving the letter.

Ms. Bradley called in sick on December 2 and December 3 and provided doctor's notes for both days. The December 3 doctor's note that released Ms. Bradley to return to work on December 4 with no restrictions. After December 3, Ms. Bradley had no more sick days or personal days left to use for the school year. Ms. Bradley did not show up for work on December 4 and for the rest of the calendar year and did not call in. The employer took no disciplinary action and did not terminate Ms. Bradley's employment at that time.

Ms. Bradley began her maternity leave on January 1, 2020. On January 15, the employer congratulated Ms. Bradley on the birth of her baby and informed her that her maternity leave began on December 31, 2019 and extended through February 10, 2020. The employer informed Ms. Bradley that she would not be charged sick leave during this period and that her return date was February 11. Ms. Bradley did not respond to the letter.

Ms. Bradley suffered complications after the birth of her child. Ms. Bradley's doctor told Ms. Bradley that they sent a note to the employer informing them of Ms. Bradley's complications and that Ms. Bradley would be released to return to work on March 2. The employer denied received any such a letter from Ms. Bradleys' doctor. Ms. Bradley did not return to work on February 11 and did not contact the employer because she assumed they had received her doctor's note. The employer sent Ms. Bradley a letter, dated February 12, informing her that her employment was terminated, effective immediately, due to job abandonment.

In mid-March, Ms. Bradley began for a different employer as a certified nurse assistant (CNA). Ms. Bradley was off of work for three weeks, beginning the week of May 12, due to pneumonia and a fever. Ms. Bradley filed her initial claim the week of May 12. Ms. Bradley was separated from that employer on June 3, 2020.

On June 10, Ms. Bradley began working for another employer, Sunny Crest Manor. She worked for this employer until September 9 when she took off of work, on the advice of her doctor, to have surgery on September 23. Ms. Bradley was in recovery from surgery for two weeks. Ms. Bradley began employment with her current employer on November 9.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Bradley was discharged from employment due to job-related misconduct but has since requalified for benefits.

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.

Iowa Code section 96.4(3) provides:

> An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:
>
> 3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The definition in 871 IAC 24.32(1)a has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep’t of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep’t of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct

must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has presented credible evidence that Ms. Bradley was aware of the attendance policy, that she was informed that she had limited sick leave days and personal days and that she was warned that she was running low on sick leave days and personal days. The employer chose not to terminate Ms. Bradley's employment December 4 through December 31 before she began her maternity leave on January 1 even though she had no sick leave days or personal days left. The employer reminded Ms. Bradley on January 15 that her return to work date was February 11. Despite this reminder, the employer's October 16, 2019 warning about her low balance of sick leave and personal days and the knowledge that she had called in on December 2 and December 3, Ms. Bradley did not return to return to work on February 11 nor did she respond in any way to the employer's January 15 letter. This is disqualifying misconduct.

DECISION:

The October 26, 2020, (reference 02) unemployment insurance decision is affirmed. Ms. Bradley was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Daniel Zeno
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February 1, 2021
Decision Dated and Mailed

dz/mh