IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

PAULA J MONNAHAN
Claimant

CARE INITIATIVES
Employer

APPEAL NO. 10A-UI-10704-NT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/06/10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Employer filed a timely appeal from a representative's decision dated July 27, 2010, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was held on September 14, 2010. The claimant participated personally. Participating as witnesses for the claimant were Angie Purdy and Charlotte Bronner. The employer participated by Lynn Corbeil, Hearing Representative; Pam Tallman, Administrator; and Rose Niemeyer, Director of Nursing. Employer's Exhibits One through Six were received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Paula Monnahan was employed by Care Initiatives, doing business as La Porte Nursing and Rehabilitation, from June 29, 2005 until June 15, 2010 when she was discharged for failing to report or provide what the employer considered to be adequate notice of her impending absences on June 12 and 13, 2010.

On Friday, June 11, 2010 Angie Purdy, a nurse employed by the facility, called Rose Niemeyer, Director of Nursing to report Ms. Monnahan's daughter had broken both wrists and that Ms. Purdy would replace the claimant for the scheduled Saturday shift on June 12, 2010. As the claimant had not personally contacted the director of nursing and Ms. Purdy had indicated that she could not cover for the claimant on Sunday, June 13, 2010, the director of nursing contacted Charlotte Bronner to cover the claimant's Sunday work shift. Ms. Niemeyer informed both Ms. Purdy and Ms. Bronner that if the claimant did report for her scheduled shifts that the replacements would be sent home.

Ms. Monnahan, the claimant, did not report to work on June 12, 2010 and provided no direct notification to her employer as required by company policy to explain why she would be reporting for work or the duration of her absence.

The following day, Sunday, June 13, Ms. Bronner covered for the claimant per the instructions that had been given to her by the director of nursing. Ms. Monnahan had been informed by Ms. Bronner and Ms. Purdy that coverage would take place. The claimant, therefore, did not contact the director of nursing or the facility's administrator about Sunday, June 13, 2010. The claimant had not requested a replacement but concluded that when management had arranged for Ms. Bronner to cover that work shift that it had been acceptable with the employer

After reviewing the matter the employer concluded that Ms. Monnahan had failed to provide proper notification of her impending absences on both June 12 and June 13 and therefore was subject to discharge under the company policy that provides for termination of an employee who fails to report or provide notification on two occasions.

Ms. Monnahan had been informed by Ms. Purdy on the evening of June 11 that the administration of La Porte Nursing and Rehabilitation desired her to personally contact them about her absence the next day. Although the claimant had the opportunity to contact her employer directly as required by company policy, she did not do so about her impending absence on June 12.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant intentionally violated the company's call-in policy on two occasions and thus was subject to discharge.

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(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.

In this case Ms. Monnahan was aware of her obligation to provide personal notification to her employer about impending absences. The claimant used the services of another employee to inform her employer that she would be absent from work on Saturday, June 12, 2010. Although later notified by the same employee that management expected the claimant to personally contact them, Ms. Monnahan did not do so although she had the opportunity and the ability to contact the employer. Although Ms. Monnahan knew that her shift was going to be replaced by Ms. Purdy the next day, the claimant nevertheless had an obligation to provide direct notification to the employer of her impending absences under established company policies.

The evidence in the record establishes that the claimant, however, did not request to be off work on Sunday, June 13, but that the employer chose to secure a replacement for Ms. Monnahan on Sunday, June13 because management was unsure whether the claimant intended to report or not. When Ms. Monnahan was informed that Ms. Bronner had been scheduled by the employer to replace her on the Sunday shift, the claimant was reasonable in her conclusion that she had no reason to contact the employer about that date. Ms. Monnahan had planned to report for work that day but upon being informed that the employer had secured a replacement for her in advance, the claimant had no reason to inform the employer that she would not be there.

The discharge letter (Exhibit One) references the claimant's absences on June 12 and June 13 as well as a previous incident where the claimant had failed to attend a staff in-service on June 8, 2010. The administrative law judge notes that it does not appear that the claimant was directly warned about the June 8 incident and that the claimant had not previously received a warning about an attendance or notification infraction on that date. The Supreme Court of the state of Iowa in the case of Sallis v. Employment Appeal Board, 437 N.W.2d 895 (Iowa 1989) held that a single, unexcused absence does not constitute misconduct even in the case in which the worker disregarded specific instructions to provide notification on that date.

Based upon the facts of this case and the application of the law, the administrative law judge concludes that there is not sufficient misconduct on the part of the claimant to justify the denial of unemployment insurance benefits. While the decision to terminate Ms. Monnahan may have been a sound decision from a management viewpoint, for the above-stated reasons the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated July 27, 2010, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirement of Iowa law.

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Terence P. Nice
Administrative Law Judge

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Decision Dated and Mailed

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