IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DAWN M BROWN
Claimant

CARGILL MEAT SOLUTIONS CORP
Employer

APPEAL NO. 07A-UI-08709-CT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/21/07 R: 03
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Cargill Meat Solutions Corporation (Cargill) filed an appeal from a representative's decision dated August 31, 2007, reference 05, which held that no disqualification would be imposed regarding Dawn Brown's separation from employment. After due notice was issued, a hearing was held by telephone on September 26, 2007. Ms. Brown participated personally. The employer participated by Melissa Skinner, Assistant Human Resources Manager.

ISSUE:

At issue in this matter is whether Ms. Brown was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Brown began working for Cargill on September 13, 2004 and last performed services on January 22, 2007. She was employed full time in production. On January 22, health services advised her to leave the employment and not return until she had a full release from her doctor. She was to maintain weekly contact with the employer regarding her status.

Ms. Brown called the employer twice in January and February. She called four times in March. She called on April 2 and April 19 but did not call again until May 14. No disciplinary action was taken as a result of her failure to make weekly contact. Ms. Brown next called on June 4. On June 16, she was notified that she no longer had employment with Cargill. She had not been told at any point that she was in danger of losing her job as a result of the failure to contact the employer on a weekly basis. She continued to send the employer funds to cover her health insurance premiums. The discharge was prompted by the fact that the employer considered her a three-day "no-call/no-show" for the period following May 14. Ms. Brown had not been released to full duty as of June 16, 2007.

REASONING AND CONCLUSIONS OF LAW:

Ms. Brown did not voluntarily quit her employment with Cargill. To find a quit, there must be evidence of an intent to sever the employment relationship accompanied by some overt act of carrying out that intent. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). Cargill asked Ms. Brown to leave in January and not return until she was released by her doctor to full duty. Although Ms. Brown was asked to maintain weekly contact, her failure to do so does not, without more, constitute a voluntary quit. The fact that she called in periodically and continued to submit her insurance premiums is indicative of an intent to preserve the employment relationship. It was the employer that initiated the separation by notifying Ms. Brown on June 16 that she no longer had employment. For the above reasons, the separation is considered a discharge.

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Brown's discharge was prompted by her failure to maintain weekly contact with the employer. She failed to maintain weekly contact in February but no disciplinary action was taken. She did not call the employer weekly in April. She did not call at all between April 19 and May 14. The employer still took no steps to put her on notice that she was not calling often enough and that she might be discharged if the practice continued.

There were three weeks between Ms. Brown's call on May 14 and her call on June 4. The employer still gave her no notice that her employment was in jeopardy. When she was notified of her discharge on June 16, it had been 11 days since her prior call. At least that amount of time had elapsed between calls in the past with no repercussions. The administrative law judge concludes that Ms. Brown was not given a fair opportunity to conform her conduct to the employer's expectations. Given the employer's failure to make an issue of the frequency of her calls in the past, Ms. Brown had no reason to believe that her actions might cause the loss of her job. In short, the employer had acquiesced to her conduct. For the reasons stated herein, the administrative law judge concludes that deliberate misconduct has not been established. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated August 31, 2007, reference 05, is hereby affirmed. Ms. Brown was discharged by Cargill but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

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Carolyn F. Coleman
Administrative Law Judge

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Decision Dated and Mailed

cfc/css