IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

JESTANIE L SIMS
Claimant

GENESIS HEALTH SYSTEM
Employer

APPEAL 20A-UI-12868-DZ-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/26/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Jestanie L Sims, the claimant/appellant filed an appeal from the October 14, 2020, (reference 01) unemployment insurance decision that denied benefits based upon being discharged. The parties were properly notified of the hearing. A telephone hearing was held on December 10, 2020. The claimant participated and testified. The employer participated through Angela Reick, Behavioral Health Manager and the claimant's supervisor and Angela Ferguson, Human Resources Coordinator. Employers Exhibit 1 was admitted into evidence.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?
Was the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: the claimant began working for the employer on January 13, 2020. She worked as a part-time behavioral health technician. Claimant's last day at work was April 9, 2020. Claimant was separated from employment on April 20, 2020 when the employer terminated her employment.

In March 2020, the United States declared a public health emergency because of the COVID 19 pandemic. Claimant learned in early April 2020 that her childcare provider would be closing due to the pandemic. Claimant's back-up childcare provider was immune-compromised and couldn't provide care for claimant's child either. Claimant remains without childcare.

Claimant was scheduled to work on April 11, April 12, April 14, April 16 and April 17, 2020. Claimant did not show up for work any of these scheduled shifts due to lack of childcare. Claimant called the charge nurse, per the employer's policy, only one of the days she was scheduled to work. Every day that claimant didn't call in for work, the employer called the claimant with no response from claimant. The employer's policy provides that if an employee

incurs three no-call/no-show absences, the employee is terminated. Employer's Exhibit 1. The claimant was aware of the employer's policy.

On October 14, claimant began self-quarantining due to testing positive for COVID-19. Claimant continued self-quarantining until November 17, 2020 due to other members of her household testing positive for COVID-19.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

This definition 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). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). 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). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, the claimant didn't show up for work for at least three days and didn't call-in or respond to the employer's calls about her work shift. The claimant's goal here was reasonable – she didn't have childcare and she didn't want to leave her child along so she didn't go to work. However, when the claimant didn't call-in or respond to the employer's calls about her work shift for more than three shifts, she violated the employer's policy. This is disqualifying misconduct. The claimant is not eligible for regular UI benefits.

Even though claimant is not eligible for regular unemployment insurance benefits under state law, the claimant may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the $600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed.

DECISION:

The October 14, 2020, (reference 01) unemployment insurance decision is affirmed. The claimant 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
Administrative Law Judge

__December 22, 2020__
Decision Dated and Mailed

dz/mh

NOTE TO CLAIMANT:

This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.

If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to https://www.iowaworkforcedevelopment.gov/pua-information. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you've received so far.**