IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

SARAH M READOUT
Claimant

GRANDVIEW HEIGHTS INC
Employer

APPEAL NO. 11A-UI-06415-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/10/11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Grandview Heights (employer) appealed a representative's May 5, 2011 decision (reference 01) that concluded Sarah Readout (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 9, 2011. The claimant participated personally. The employer participated by Chris Wolf, administrator, and Heather Keely, certified nursing assistant coordinator. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on November 1, 2010, as a full-time certified nursing assistant. The claimant signed for receipt of the employer's handbook on November 1, 2010. The handbook indicates that an employer who reaches 18 attendance points will be terminated. The employer issued the claimant written warnings for attendance on January 26, February 21, and April 5, 2011. The claimant had five absences due to properly reported illness, two absences due to a sick child, one because her father had a stroke, and one time she misread the schedule. The employer notified the claimant that further infractions could result in termination from employment. As of the April 5, 2011 warning, the claimant had accumulated 20 points.

On April 14, 2011, the claimant received word that her grandmother had suffered a heart attack. The employer told the claimant that she did not have to find a replacement for her to leave early. The claimant asked the employer for assurance that it was acceptable for her to leave an hour early. The employer told the claimant not to worry. The claimant left an hour early. On April 15, 2011, the employer terminated the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for 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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer gave the claimant permission to leave in an emergency situation and then terminated her for leaving. This occurred after the employer let the claimant remain at work after her point total had exceeded the acceptable amount. The claimant relied on the employer's word. The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's May 5, 2011 decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw