

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LISA R MILLS
Claimant

APPEAL 17A-UI-08267-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

REM IOWA COMMUNITY SERVICES INC
Employer

**OC: 07/23/17
Claimant: Appellant (5)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

Lisa R. Mills (claimant) filed an appeal from the August 4, 2017, reference 01, unemployment insurance decision that denied benefits based upon the determination she voluntarily quit her employment for personal reasons which is not a good cause reason attributable to REM Iowa Community Services, Inc. (employer). The parties were properly notified about the hearing. A telephone hearing was held on August 30, 2017. The claimant participated. The employer participated through Regional Director Kelly Flanagan. No exhibits were received as the proposed exhibit from the claimant was illegible. However, the claimant was allowed to read the letter in its entirety into the record.

ISSUE:

Did the claimant voluntarily leave the employment with good cause attributable to the employer or did the employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was rehired full-time as a Direct Service Provider beginning on January 30, 2006. On December 1, 2013, after working as a Program Coordinator, she was promoted to a Program Director position. The claimant's last day worked was November 1, 2016.

The claimant began job protected leave under the Family Medical Leave Act (FMLA) due to bronchitis which later developed into a cold. She began to experience stress over returning to work and was diagnosed with depression and anxiety. Her doctor prescribed different medications and, after the claimant's job federally mandated job protected leave ended on January 3, 2017, she was placed on extended medical leave.

On April 6, 2017, the employer sent the claimant a letter explaining it had become a hardship keeping her position open and it might have to consider filling her position. The letter stated the

employer would wait until it received an update from the claimant's doctor following her April 17 appointment before making any decisions.

The claimant went to her appointment on April 17, 2017 and her doctor wanted her to remain on leave. Her doctor did not say she needed to quit her job, but recommended she look for a different job that might be less stressful. The claimant asked the doctor for an update for her employer, as she had done in the past. However, the claimant did not receive any information confirming this had been done.

On April 26, 2107, the employer sent the claimant another letter. The employer explained it had not received an update following the claimant's April 17 doctor's appointment. It also explained it was going to fill her Program Director position but asked for additional medical documents within three days of the receipt of the letter. The claimant did not respond to the employer's letter or make any contact with the employer. On May 22, 2017, the employer terminated the claimant's employment due to a failure to return from medical leave.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not voluntarily quit but was discharged from employment due to job-related misconduct. Benefits are denied.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. The burden of proof rests with the employer to show that the claimant voluntarily left her employment. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). It requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). Where there is no expressed intention or act to sever the relationship, the case must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

In this case, the claimant did not express an intention to end her employment nor did she engage in an overt act to carry through on that intention. The employer has not met its burden to show the end of the claimant's employment was voluntary. The case will be analyzed as a discharge.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). Iowa Administrative Code rule 871-24.32(1)a provides:

"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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The issue is not whether the employer made a correct decision in separating the 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). 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. Iowa Admin. Code r. 871-24.32(7); see *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190, n. 1 (Iowa 1984) holding "rule [2]4.32(7)...accurately states the law."

The requirements for a finding of misconduct based on absences are twofold. First, the absences must be excessive. *Sallis v. Emp't Appeal Bd.*, 437 N.W.2d 895 (Iowa 1989). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins* at 192. Second, the absences must be unexcused. *Cosper* at 10. The requirement of "unexcused" can be satisfied in two ways. An absence can be unexcused either because it was not for "reasonable grounds," *Higgins* at 191, or because it was not "properly reported," holding excused absences are those "with appropriate notice." *Cosper* at 10. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins, supra*.

FMLA provisions were enacted to protect an individual's employment, not to be used as a weapon by an employer against its employee. Likewise, an employee bears responsibility for compliance with FMLA terms and cooperative communication with the employer. In this case, the claimant was on an approved leave from November 1, 2016 through April 17, 2017. However, she received notice on April 6, 2017 that her absences would no longer be approved after April 17, 2017 without updated information from her doctor. On April 26, 2017, the claimant was given notice that the employer had not received the updated information from her doctor and that information was required to remain on leave. The claimant did not contact the employer and did not provide the required information. The claimant's argument that she did not know she was still employed after the April 26, 2017 letter because the employer put her on notice it was filling her position is not persuasive as the employer also continued to seek the medical documentation. The claimant's absences became unexcused after April 17, 2017 because the claimant failed to properly report her absences by providing medical documentation required by the employer and, by the time she was discharged, on May 22, 2017, the absences had become excessive. The claimant was discharged for excessive, unexcused absenteeism. Accordingly, benefits are denied.

DECISION:

The August 4, 2017, reference 01, unemployment insurance decision is modified with no change in effect. The claimant did not voluntarily quit but was discharged from employment due to excessive, unexcused absenteeism. 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.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn