IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MARY J WIEDERIEN Claimant	**APPEAL NO. 13A-UI-11333-S2T** **ADMINISTRATIVE LAW JUDGE DECISION**
YOUNG MENS CHRISTIAN ASSOCIATION Employer	**OC: 09/08/13** **Claimant: Appellant (4)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Mary Wiederien (claimant) appealed a representative's October 2, 2013, decision (reference 03) that concluded she voluntarily quit work with Young Mens Christian Association (employer) but was eligible to receive unemployment insurance benefits because she had sufficient wages earned with other employers on her claim. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 31, 2013. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing.

ISSUE:

Whether the claimant is partially unemployed and the employer is relieved of benefit charges.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired in 2004, as a part-time child care worker. At the time she was hired she worked four hours per week. Later she increased her hours to seven hours per week. In May 2010, the claimant requested and the employer allowed the claimant to reduce her hours to seven hours per month. At the beginning of June 2013, the employer told the claimant she had to work four hours per week or there would be no work for her. The claimant told the employer she could not work four hours per week with a full-time job and three children. The employer told the claimant her last day would be June 29, 2013. The claimant worked through June 29, 2013.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant did not voluntarily quit work.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

A voluntary leaving of employment 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). The claimant had no intention to leave work. The separation was not voluntary and must be evaluated as involuntary.

For the reasons that follow, the administrative law judge concludes the employer discharged the claimant but did not prove 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). The employer did not have work for the claimant if she did not work four hours per week. The employer did not participate in the hearing and, therefore, provided no evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's October 2, 2013, decision (reference 03) is modified in favor of the appellant. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

____
Beth A. Scheetz
Administrative Law Judge

____
Decision Dated and Mailed

bas/pjs