IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MARY B WELLS
Claimant

APAC CUSTOMER SERVICES OF IOWA
Employer

APPEAL NO. 11A-UI-09286-H2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05-15-11
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 5, 2011, reference 02, decision that all benefits. After due notice was issued, a hearing was held on August 4, 2011. The claimant did participate. The employer did participate through Rochelle Jordan, human resources specialist.

ISSUE:

Was the claimant discharged due to job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as an at-home representative, full-time, beginning March 6, 1995, through May 13, 2011, when she was discharged. The claimant went on personal leave to deal with her granddaughter who was determined by the court system to be a Child in Need of Assistance (CHINA) and placed in her custody. Under the custody order the claimant was to herself be with the child or to have someone else be with the child 24 hours per day, seven days per week. The claimant had worked from home for the vast majority of her employment. As her granddaughter could not be left alone without reliable supervision, the claimant needed to continue working at home. The claimant's leave was to expire on May 9, 2011. She began her leave of absence on April 25, 2011. The employer wanted her to attend a two-week training period outside her home for a new customer in late April 2011. The claimant contacted Jennifer, her Department of Human Resources case worker, in an attempt to find someone to stay with her granddaughter while she attended her two-week training course. Because of state cutbacks, there was no one available to stay with the claimant's granddaughter. The claimant could not find someone to be with her granddaughter as required by the court order, so was unable to tell the employer when she would be ready to return to work. The employer could have offered the claimant an extension on her leave but chose not to do so, despite the fact that she would have qualified for FMLA or for additional leave under their own leave of absence policy. On May 13, Joe Mies, the claimant's supervisor, told her that she had to either quit or she would be fired because she could not attend the training session or tell the employer a specific date she would be able to return to work. Mr. Meis did not offer the claimant additional time on her leave of absence despite the fact that she qualified for leave under the employer's

policy. The claimant refused to quit and was then discharged by Mr. Meis. The claimant had no prior warnings for absenteeism.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. The conduct for which claimant was discharged was beyond her control. She could have been granted additional leave by the employer as she continued to look for someone to stay with her grandchild during her training period, but the employer did not make the offer despite the fact that the claimant was entitled under their own policy for additional leave. The claimant had no history of excessive absenteeism and had no prior warnings for missing work. Inasmuch as employer had not previously warned claimant about any of the issues leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Benefits are allowed.

DECISION:

The July 5, 2011 (reference 02) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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Teresa K. Hillary
Administrative Law Judge

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Decision Dated and Mailed

tkh/kjw