IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MONICA M FELLER
Claimant

MARK QUINN
NO SWEAT FITNESS SALES & SERVICE
Employer

APPEAL NO. 08A-UI-08304-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/13/08 R: 01
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

No Sweat Fitness Sales & Service (employer) appealed a representative's September 12, 2008 decision (reference 01) that concluded Monica Feller (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 October 1, 2008. The claimant participated personally. The employer participated by Mark Quinn, Owner.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

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 on October 20, 2006, as a full-time office assistant. The employer did not have a handbook. The employer talked to the claimant on or about August 6, 2008, for not taking good notes regarding a court case in which the employer was involved.

At the time the claimant was hired the employer told her he would pay for her dental insurance. The claimant found dental insurance for $103.63 every two weeks. From the beginning of her employment until the end the claimant wrote a check every two weeks for that expense. The employer did not investigate into the cost of dental insurance. The claimant had always reimbursed herself for gas to run the employer's errands at the employer's direction. In August 2008, the employer thought the claimant was stealing from him because the costs for gas and dental were too high.

The employer thought the claimant's performance was poor. He left his partial dental plate and a note that said "asap" for the claimant to take to the doctor while he was on vacation. The claimant was busy performing the employer's work and took the item to the doctor on Wednesday instead of Monday. She explained this over the telephone to the employer. The employer said it was fine. The employer asked the claimant to purchase a "For Sale" sign. The

claimant did so. The employer thought he told the claimant to put the sign in the gym and was upset when the claimant did not post the sign.

On August 11, 2008, a co-worker told the employer the claimant said "Mark was supposed to be doing something but he's in Davenport doing drugs." The claimant actually said that Mark was in Davenport doing sales. The employer terminated the claimant on August 11, 2008.

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 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 September 12, 2008 decision (reference 01) is affirmed. The employer has not met its 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/pjs