IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ALENA J GOLDSTEIN
Claimant

BUILDER'S WHOLESALE SUPPLY LC
Employer

APPEAL NO. 10A-UI-15628-H

ADMINISTRATIVE LAW JUDGE DECISION

OC: 08/22/10
Claimant: Respondent (1)

Section 96.5(1) – Quit
Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Builder's Wholesale Supply (BWS) filed an appeal from a representative's decision of November 1, 2010, reference 01. The decision allowed benefits to the claimant, Alena Goldstein. After due notice was issued, a hearing was held in Ottumwa, Iowa, on March 28, 2011. The claimant participated on her own behalf and was represented by William Goldstein. The employer participated by Owner Joy Hirshberg, President Joel Hirshberg, Operations and IT Manager Daniel Blum, and Graphic Designer Aaron Hirshberg. Exhibits A, B and One were admitted into the record.

ISSUE:

The issue is whether the claimant quit work without good cause attributable to the employer or was discharged for substantial job-related misconduct.

FINDINGS OF FACT:

Alena Goldstein was employed by BWS from May 8, 2009 until June 18, 2010. She began work as a sales associate and customer service representative.

Sometime in December 2009, the claimant began to talk about taking an extended vacation to Europe. She made an official request for time off in an email to President Joel Hirshberg on April 15, 2010. She was requesting time from approximately June 21 through August 13, 2010. Mr. Hirshberg verbally responded to her request the next day stating that he would not authorize more than two weeks of vacation. From that date until June 18, 2010, Ms. Goldstein had periodically approached Mr. Hirshberg or Owner Joy Hirshberg, requesting them to reconsider and allow her to take the entire period of time as vacation. She was told each time only two weeks would be authorized and if she chose to take the entire six to eight weeks, then it was her own "choice" or "decision." Ms. Goldstein acknowledged that it was "too good of an opportunity to pass up" and she would be taking the entire time.

Approximately two weeks from her proposed beginning date of her vacation, the employer had assigned her to work in the showroom rather than in the upstairs office. There were some new duties as part of this change but no increase in salary. Ms. Goldstein elected to see this as a "promotion," because she thought she had greater responsibilities as part of her regular job duties. Because of what she considered to be a promotion, she assumed the employer was going to hold this job open for her while she went on her extended European vacation. The employer intended this new position to be an "inducement" for her to return from her vacation after only two weeks. The last time the claimant and the employer's representatives spoke was on June 15, 2010, when Ms. Goldstein again asked for the employer to approve the extended vacation and the employer declined and stated if she chose to take the time, it would be her own decision.

The employer considered the claimant to have voluntarily resigned as of June 18, 2010, when she left on her vacation and did not contact the employer until mid August when she returned. The claimant believed she had been discharged when she did not have a job to return to after contacting the employer approximately 48 or 72 hours after her return from Europe.

REASONING AND CONCLUSIONS OF LAW:

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.

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.

Both the claimant and the employer have substantial facts on their side regarding the nature of the separation. The problem is that both parties made unwarranted assumptions and both were guilty of a serious lack of clear and concise communication. Ms. Goldstein obviously felt, even though she was an employee with only 12 months of employment in what was essentially a clerical position, her services were so intrinsically valuable to the employer that she would be allowed to take six to eight weeks of unapproved leave and still have her job waiting for her when she returned. She based this assumption on the fact of the change in her job duties, which she chose to see as a promotion, and that the employer would not have offered her this job if it did not intend to retain her as an employee. The employer's assumption was that the claimant understood these changes in her job duties were merely an inducement for her to return from vacation after two weeks rather than six or eight.

Neither party is warranted in their assumptions and neither party bothered to get any clear concise communication in writing defining and outlining the expectations. Nonetheless the administrative law judge considers that the employer had the greater burden of communication in this case. Offering the claimant a trial period of a position with new, and possibly greater, responsibilities, BWS did give the impression that it intended to nurture Ms. Goldstein's continued employment and provide her with opportunities to advance within the company. Stating to the claimant that if she chose to go on an extended vacation it was her decision is a far cry from explicitly stating to the claimant that if she did not return within two weeks she would no longer have a job with the company.

The employer ended the claimant's employment effective June 18, 2010, when she left for the vacation and considered this a voluntary quit. There was insufficient evidence to support the contention it was a voluntary quit and a decision to separate the claimant on June 18, 2010 was entirely that of the employer. As Ms. Goldstein had not received any warnings that she would be discharged if she took the extended vacation, the record cannot support a finding of substantial job-related misconduct. Disqualification may not be imposed.

DECISION:

The representative's decision of November 1, 2010, reference 01, is affirmed. Alena Goldstein is qualified for benefits, provided she is otherwise eligible.

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Bonny G. Hendricksmeyer
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw