IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MARIA C GARCIA DE SANCHEZ
Claimant

SWIFT & COMPANY / JBS
Employer

APPEAL NO: 10A-UI-02906-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/24/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Maria C. Garcia de Sanchez (claimant) appealed a representative's February 15, 2010 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Swift & Company / JBS (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 13, 2010. The claimant participated in the hearing. Tone Luse appeared on the employer's behalf. Sylvia Huante served as interpreter. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 11, 2003. She worked full time on the first shift as a production worker in the employer's Marshalltown, Iowa pork processing facility. Her last day of work was Friday, November 27, 2009.

When the claimant finished work that day and returned home, she learned that her father in Mexico was very sick and was going to be undergoing prostate surgery. She immediately contacted the employer and spoke to Javier Sanchez, the second shift assistant human resources manager. She told him that she needed to leave immediately to go to be with her father, estimating that she would be gone for about two weeks. Mr. Sanchez attempted to dissuade her, advising that she wait and speak to a first shift human resources manager on the following Monday, and telling her that if she went immediately, she would be fired. However, the claimant indicated she could not wait until Monday to leave. She and her son left shortly thereafter to drive to Mexico.

The claimant asked her husband, who was still in Marshalltown, to contact the employer on December 8 to get a fax number for the employer so that she could ask her father's doctor to fax the employer a statement to validate the reason she had needed to go to Mexico. However, when the claimant's husband spoke to the employer's human resources coordinator, he told the claimant's husband that the claimant had already been terminated. The employer considered the claimant to have been a no-call/no-show for work for three days beginning November 30, and therefore considered her to have quit by job abandonment.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

Rule 871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The employer asserted that the claimant was not discharged but that she quit by job abandonment. However, while the claimant did not call in for three days beginning November 30, prior to leaving the claimant had given the employer on notice that she would be absent from work for about two weeks and the reason why she was going to be absent. The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code § 96.6-2. As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance. 871 IAC 24.26(21).

The issue in this case is then whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, 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 is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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.

871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason the employer effectively discharged the claimant was her "no-call/no-show" absences from work for three days beginning November 30. Absenteeism can constitute misconduct; however, to be misconduct, absences must be both excessive and unexcused. 871 IAC 24.32(7). A determination as to whether an absence is excused or unexcused does not rest solely on the interpretation or application of the employer's attendance policy. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. 871 IAC 24.32(7); Cosper, supra; Gaborit v. Employment Appeal Board, 734 N.W.2d 554 (Iowa App. 2007). In this case, the employer effectively asserts that the reason for the final absences was not properly reported. However, it is clear that the claimant's failure to daily call to report her absences beginning November 30 was because she was in Mexico and because she had already informed the employer of her intended absences. The employer knew or should have known that the claimant would be absent for an extended period of time. Floyd v. Iowa Dept. of Job Service, 338 N.W.2d 536 (Iowa App. 1986). Because the final absences were related to a sufficiently reported reasonable purpose, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed. The employer has failed to meet its burden to establish misconduct. Cosper, supra. The claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's February 15, 2010 decision (reference 01) is reversed. The claimant did not voluntarily quit and the employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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