IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ENISA HAMZAGIC
Claimant

IFBF PROPERTY MANAGEMENT INC
Employer

APPEAL NO: 08A-UI-07874-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/06/08 R: 02
Claimant: Respondent (1/R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

IFBF Property Management, Inc. (employer) appealed a representative's August 25, 2008 decision (reference 01) that concluded Enisa Hamzagic (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 9, 2008. The claimant participated in the hearing. Catherine Drexler, attorney at law, appeared on the employer's behalf and presented testimony from three witnesses, Diane Whisenand, Steve Flug, and Melanie Summers. Karmela Lofthus 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 the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 22, 2007. She worked full time as a building services attendant on a Monday through Friday, 4:30 p.m. to 12:15 a.m. schedule. Her last day of work was June 27, 2008. She left early that day, at about 8:00 p.m., reporting that she was feeling ill due to a headache.

The claimant did not report for work on June 30. Rather, at approximately 4:30 p.m. her daughter delivered to the employer a doctor's note excusing the claimant from work beginning that date through July 15 for "medical reasons." However, the note was dated by the doctor on June 23. The employer believed the claimant had left on an unapproved personal trip to Bosnia and that the medical excuse was not valid, and as a result, the employer sent the claimant a letter by certified mail on July 2 terminating the claimant's employment; the claimant received the letter on or about July 7.

In early January the claimant had approached her supervisor, Ms. Whisenand, seeking to take about three weeks off in June or July to make a trip to Bosnia to see family. However, the claimant only had nine days of vacation allowable to her, so Ms. Whisenand told the claimant

"no." The claimant inquired if could take the time if she brought in a doctor's note for the remaining time, not specifying any medical reason under which she might need a doctor's note, and Ms. Whisenand again said "no." There were further discussions in at least May in which the claimant reiterated her request, including suggesting she could get a doctor's note, and the employer continued to deny the request. Ms. Whisenand became aware in May that the claimant had gone so far as to purchase the airline tickets for a departure date of June 28. When Ms. Whisenand later asked the claimant for a definite answer as to whether she was going, the claimant indicated that it at least somewhat depended on whether she was able to obtain a travel visa, but that she would get back to Ms. Whisenand with an answer shortly. However, the claimant never got back to Ms. Whisenand with a definite answer. Ms. Whisenand and the claimant did not directly discuss the issue essentially the entire month of June; Ms. Whisenand had determined it was the claimant's responsibility to let her know what she was doing, and did not press the issue with the claimant.

When the claimant did not report for work on June 30 but instead the doctor's note dated June 23 was delivered excusing the claimant from work through July 15, the employer concluded that the claimant had indeed departed on her trip and was attempting to have her absence covered at least in part by an invalid medical excuse as she had previously insinuated she could provide. As a result, the employer terminated the claimant's employment.

In actuality, the claimant had not departed on her trip. In about mid-June she had learned that she would not be able to obtain the necessary travel visa from the government. Although she had gone so far as to purchase airline tickets, she cancelled those tickets. She thought she had told Ms. Whisenand that she had not been able to get the travel visa so that Ms. Whisenand would understand the claimant was not going on her trip, but this was not effectively communicated to Ms. Whisenand.

The claimant had been suffering from migraine headaches, and she had gone into her doctor for treatment on June 23. She had gotten an injection, which she believed would relieve her condition for at least that week. The doctor was going to be leaving on her own vacation, so she instructed the claimant that if after the injection wore off she were to have a reoccurrence of the headaches while the doctor was gone, she was to take some time off from work; she therefore gave the claimant the doctor's note excusing the claimant from June 30 through July 15.

The claimant did not turn in the June 23 doctor's note that day or that week as she did not know if she was going to need to use it or not. However, her headaches returned on June 27, resulting in her going home early. The claimant therefore sent the doctor's note in with her daughter on June 30.

REASONING AND CONCLUSIONS OF LAW:

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). The question is not whether the employer was right 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 matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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 discharged the claimant was the belief that she had taken time off for a trip which she had been denied, and that she was doing so by trying to use an invalid doctor's excuse. Given the prior discussions which had occurred between the claimant and the employer between January and May, the employer's assumption was not unreasonable. However, a doctor's note is prima facie evidence of a claimant's physical ability to work at the time in question. 871 IAC 24.22(1). It does not appear that the employer made an attempt to verify the validity of the doctor's note, but merely relied on its assumption based on the claimant's prior inferences. While the assumption was not unreasonable, it is not sufficient to override the presumption that comes with a signed doctor's note. While the claimant was also negligent in not clearly communicating to the employer that her travel plans had changed, under the circumstances of this case, the claimant's failure to make her changed situation of no travel but treatment for migraines clear to the employer was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence, or was a good faith error in judgment or discretion. While the employer had a good business reason for deciding to discharge the claimant, it has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

An issue as to whether the claimant was eligible to receive unemployment insurance benefits as being able and available for work at least during the period of time covered by her doctor's note arose as a consequence of the hearing. This issue was not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

DECISION:

The representative's August 25, 2008 decision (reference 01) is affirmed. 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. The matter is remanded to the Claims Section for investigation and determination of the able and available issue.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs