IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

NICOLE E YOUNG
Claimant

ALLEN MEMORIAL HOSPITAL
Employer

APPEAL NO. 16A-UI-09682-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 08/07/16
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Nicole Young (claimant) appealed a representative's August 26, 2016, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Allen Memorial Hospital (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 26, 2016. The claimant participated personally. The employer participated by Steve Seesterhann, Vice President of Human Resources, and Wendy Bienemann, Director in the Laboratory.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 July 24, 2001, as a full-time laboratory technician associate. The claimant received the employer's handbook. The handbook states that nine occurrences is termination. The employer did not issue the claimant any warnings during her employment. The claimant had filed for and had been granted Family Medical Leave (FMLA) previously. The employer had always mailed the claimant paper copies of the FMLA application documents for the claimant to complete. The claimant could not work after June 8, 2016, due to mental health issues. She was homebound and communicated with the employer that she needed FMLA.

The claimant properly reported her absences from work after June 8, 2016. She was having mental health issues. Her mother did her shopping for her. The claimant was in contact with the employer by telephone. She contacted her doctor's office immediately but was unable to get an appointment until August 2, 2016. She was on a standby list for cancellations.

Unbeknownst to the claimant, the employer sent the FMLA document's to the claimant's work email address. The claimant did not have her work password or a printer to print the documents if she had known they were there. On June 23, 2016, the employer sent a letter to the claimant

saying she had to have her FMLA application to the employer by July 25, 2016, or her absences would be counted toward the attendance policy. The claimant received the letter on July 26, 2016. She thought it was too late to have her doctor complete the paperwork.

On August 9, 2016, the employer terminated the claimant for not completing the FMLA paperwork and therefore having too many absences due to medical issues.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.,* 275 N.W.2d 445, 448 (Iowa 1979).

Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The employer would not have terminated the claimant if she could only have stopped being sick and figured out a way to print those documents. If the claimant could have left the house and found a printer, the claimant would still be employed. The employer would not have required employees

with other types of medical conditions to overcome their medical circumstances to meet this requirement. The employer had provided the printed documents to the claimant previously. Failure to have the documents completed is not misconduct.

Iowa Code § 96.5-2-a provides:

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Iowa Admin. Code r. 871-24.32(8) provides:

> (8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incidents of

absences were properly reported illnesses. The claimant's absence does not amount to job misconduct because it was properly reported. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

DECISION:

The representative's August 26, 2016, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz
Administrative Law Judge

_____
Decision Dated and Mailed

bas/pjs