IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

TONYA M SEE
Claimant

GENESIS DEVELOPMENT
Employer

APPEAL NO: 09A-UI-03020-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/25/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Genesis Development (employer)) appealed a representative's February 19, 2009 decision (reference 01) that concluded Tonya M. See (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 March 18, 2009. The claimant participated in the hearing. Cathy Miller appeared on the employer's behalf. Based on the evidence, the arguments of the parties, a review of the law, and assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, 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 July 17, 2008. She worked full time on a flexible schedule as a community support specialist in the employer's human services organization providing services to persons with mental health disabilities. The claimant primarily worked with four clients providing home, independent living, and companion services. Her last day of work was January 23, 2009. The employer discharged her on January 27, 2009. The reason asserted for the discharge was chronic absenteeism, not following procedures, and discrepancies in time reflected on her time sheets as compared to reports from clients' family members.

The claimant was absent on January 8 and January 9 due to sick children, which she called in to the employer. On January 12 the employer discouraged staff from working due to dangerous weather conditions. On January 15 the claimant called in due to personal illness; she had a doctor's excuse covering her through January 23 unless she felt as if she could return before then.

The claimant reflected on her time sheet that she had worked on January 22 and January 23. The employer received some reports from clients' family members on or about January 27 indicating that the claimant had not seen their family member client for weeks, and concluded that the claimant had provided false information on her time sheet. However, the claimant credibly testified that she had spent time with the clients on those two days.

The claimant was absent on January 26 and January 27 due to the illness of her father. The employer asserted that the claimant had not properly called in to report the absence by directly contacting the community living director, Ms. Miller. The claimant believed the message had been transmitted to the employer. There had not been any prior formal discipline given to the claimant, and particularly no warning that her job was in jeopardy should she fail to make direct voice contact with Ms. Miller.

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 cited by the employer for discharging the claimant is the combination of issues regarding her attendance and time documentation. Considering the credibility of the witnesses, the degree of first-hand and second-hand testimony, and the reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant falsely claimed to be working when she was not, and that she knowingly failed to ensure the employer was properly informed of her final absence. Excessive unexcused absences can constitute misconduct, however, in order to establish the necessary element of intent, the final incident

must have occurred despite the claimant's knowledge that the occurrence could result in the loss of her job. Cosper, supra; Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). Misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. Huntoon, supra. 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.

DECISION:

The representative's February 19, 2009 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.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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