IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

JILL D ROURKE
Claimant

OELWEIN COMMUNITY SCHOOL DISTRICT
Employer

APPEAL NO. 19A-UI-02476-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/24/19
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Oelwein Community School District (employer) appealed a representative's March 19, 2019, decision (reference 01) that concluded Jill Rourke (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 9, 2019. The claimant participated personally. The employer participated by Michael Rueber, Business Manager. Exhibit D-1 was received into evidence. The employer offered and Exhibit 1 was received into evidence.

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 August 24, 1999, as a full-time para-educator/teacher associate. The employer had a handbook but the claimant did not sign indicating she had received it. One of the absenteeism policies in the handbook stated that misuse of leave procedures could result in disciplinary action. Another policy stated that every employee should know who to report their absences. If the claimant needed to leave early and her principal was available, she reported it to her. If she was not, she reported it to the teacher she was working with. The employer never issued her any warning for this procedure. The employer did not issue the claimant any written warnings during her employment.

On December 20, 2018, the claimant received a call asking her to collect her two-year-old grandchild who was vomiting. She was working in a classroom with one lead teacher and four other para-educators. The students were decorating cookies. At 3:10 p.m. on December 20, 2018, the claimant asked the lead teacher if it was okay for her to leave early. The claimant left work and the principal watched the claimant drive away. The claimant took her grandchild to the doctor where the child was diagnosed with influenza.

On December 21, 2018, the claimant completed her timecard and documented that she left at 3:30 p.m. on December 20, 2018, forgetting about her early exit the previous day. This was the

last day of the school year before winter break. The claimant returned to work on January 3, 2019.

On January 4, 2019, the principal issued the claimant a letter placing her on paid administrative leave. The letter indicated she was recommending to the Board of Education that the claimant be terminated for her actions on December 20 and 21, 2018. The principal said that the claimant could chose to resign, meet with the superintendent or the Board in open or closed session.

The claimant chose to meet with the superintendent of schools. After the meeting on January 15, 2019, the superintendent wrote a letter stating he was recommending her termination to the Board of Education. He thought she had a duty to notify her employer she was leaving, she did not "perform basic employment functions" by properly indicating what time she left, she "willfully neglected her classroom" by leaving early, and she used her personal cellphone on an unknown date. On January 15, 2019, the claimant sent the employer an email stating she was resigning because she had no choice.

The claimant filed for unemployment insurance benefits with an effective date of February 24, 2019. She received unemployment insurance benefits after her separation from employment. The employer provided the name and number of Michael Rueber as the person who would participate in the fact-finding interview on March 13, 2019, at 2:30 p.m. The fact finder called Mr. Rueber but he was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer responded to the message at 2:57 p.m. but was unable to make contact with the fact finder. The employer attached documents to its claim that were not transmitted. It did not provide any additional documents for the fact-finding interview. It did not identify or submit the specific rule or policy that the claimant violated which caused the separation.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant voluntarily quit without good cause attributable to the employer. For the following reasons the administrative law judge concludes she did not.

Iowa Admin. Code r. 871-24.26(21) provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> (21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

If an employee is given the choice between resigning or being discharged, the separation is not voluntary. The claimant had to choose between resigning or being fired. The claimant's separation was involuntary and must be analyzed as a termination.

The issue becomes whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes she was not.

Iowa Code section 96.5(2)a provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

> 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 disqualification shall continue 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).

Iowa Admin. Code r. 871-24.32(4) provides:

> (4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The employer terminated the claimant for four reasons. One of the reasons it listed was for using her cellphone at work. The employer could not provide any dates when this occurred or any warnings for this type of infraction. Another reason the claimant was terminated was for "willfully neglecting her classroom". This presumably occurred after notifying the lead teacher she was leaving and the students remained with a lead teacher and four para-educators. The claimant was the only eye-witness at the appeal hearing to testify to the condition of the classroom and her means of reporting. The employer did not provide a witness or a statement from any of the five adults present in the classroom. The employer did not provide first-hand

testimony at the hearing and, therefore, did not provide sufficient eye witness evidence of job-related misconduct to rebut the claimant's denial of said conduct.

The next infraction relates to the claimant's failure to report her absence to the principal. The employer did not provide any documentation or witness statement indicating that the claimant was instructed or given documentation showing that her reporting person was the principal. In this case, the claimant had many instances where she did not report leaving early to the principal and there were no consequences. One cannot fault an employee for not following an instruction they were not given.

The final instance is the claimant's failure to properly record her time for December 20, 2018. An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. The claimant filled out her timecard on December 21, 2018, the last day of school before winter break. She forgot she left early the day before. Her mistake was inadvertent and does not rise to the level of misconduct.

Inasmuch as the employer had not previously warned the claimant about any of the issues leading to the separation, it has not met the burden of proof to establish the claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer did not provide sufficient evidence of job-related misconduct. It did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's March 19, 2019, decision (reference 01) is affirmed. 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

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Decision Dated and Mailed

bas/rvs