IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

PAMELA G THOMAS
Claimant

IOWA PHYSICIANS CLINIC MEDICAL
Employer

APPEAL NO: 14A-UI-04696-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/13/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Pamela G. Thomas (claimant) appealed a representative's May 1, 2014 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Iowa Physicians Clinic Medical (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 27, 2014. The claimant participated in the hearing and was represented by Jim Hamilton, paralegal. Christine Brown appeared on the employer's behalf and presented testimony from one other witness, Tracy Arbogast. During the hearing, Employer's Exhibits One, Two, and Three were entered into evidence. 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?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on November 12, 2007. She worked part time (about 30 hours per week) as a clinical lab technician in the employer's Ankeny, Iowa clinic. Her last day of work was February 7, 2014. The employer asserted that she voluntarily quit by being a no-call, no-show for three consecutive days on February 26, February 27, and February 28.

The claimant had been off work due to a work-related medical issue since about November 19, 2013. One of the doctors she had been seeing under the employer's workers' compensation coverage had released her on or about January 31, 2014 as able to return to work on February 6. She did return to work that day, but left early after finding her prior work station was

no longer assigned to her and after finding she was still having discomfort. She did work on February 7, but was still in discomfort.

She called in absences each day of the week of February 10, reporting continued pain. She was seen by another of the workers' compensation doctors on February 13, who did not change her work restrictions, but indicated that her work station needed to be reviewed for ergonomics. She assumed that this was a requirement of her returning to work and that the doctor was communicating this to the workers' compensation carrier who would communicate it to the employer. She understood this issue was a continuation of her absence from work due to her work-related injury, for which she had only needed to call into the employer weekly. As a result, she called in for the week on February 17 and again for the week on February 24.

The employer considered the claimant's absences after February 7 to no longer be due to the work-related injury and expected her to be calling in daily. On February 25 one of the human resources representative called the claimant. She screamed at the claimant, telling her she needed to be at work, chastising her for not calling in daily and for not calling the clinic administrator, Arbogast, directly. She told the claimant that she was not to be calling the clinic's front desk. The claimant told the human resources representative that she did not have Arbogast's phone number; the representative told the claimant that she would call her back with that information. However, the representative never did call the claimant back with that information.

The claimant did not call in beginning February 26 because she had been told that she was not to call the front desk and she had not been given Arbogast's number. On March 6 the employer sent the claimant a letter advising her it considered her to have voluntary quit by job abandonment by being a three-day no-call, no-show.

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 voluntarily quit by job abandonment by being a three-day no-call, no-show as provided by the employer's policies. A three-day no-call, no-show in violation of company rule can be considered to be a voluntary quit. Rule 871 IAC 24.25(4). However, the provisions of the rule only create the inference that there was an intent to quit; that inference can be overcome by evidence to the contrary. *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). Here the claimant only ceased calling in because she had been instructed not to call the front desk as she had been doing and had not been provided the number of the person she was to call as she had requested. She reasonably concluded that the employer knew it was to be performing an ergonomics review of her work station and would contact her when it was prepared to do so. 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. Rule 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. Rule 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. Rule 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. Rule 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 unreported absence beginning February 26, 2014. 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). She reasonably believed that the employer knew that she was staying off work due to pain until such time as the ergonomics review was conducted. The employer knew or should have known that the claimant would be absent for the medical reasons, whether work-related or not, until that review was done. *Floyd v. Iowa Dept. of Job Service*, 338 N.W.2d 536 (Iowa App. 1986). The employer 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.

DECISION:

The representative's May 1, 2014 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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