IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

CAROL S ANDERSON
Claimant

HY-VEE INC
Employer

APPEAL NO. 13A-UI-09719-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/09/12
Claimant: Appellant (2)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Carol Anderson filed a timely appeal from the August 16, 2013, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on September 26, 2013. Ms. Anderson did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Bruce Burgess of Corporate Cost Control represented the employer and presented testimony through Amy Jordahl. Exhibits One through Four were received into evidence.

ISSUE:

Whether Ms. Anderson separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Carol Anderson was employed by Hy-Vee in Atlantic as a part-time pharmacy clerk from January 2013 until July 22, 2013, when Amy Jordahl, Store Director, removed her from that position. Ms. Anderson worked from 20 to 35 hours per week. Ms. Anderson's wage in the pharmacy clerk position was $12.00 per hour. Ms. Anderson's immediate supervisor was Pharmacist Matt Brummer. Ms. Anderson's position involved handling confidential patient information and adherence to HIPAA. In March 2013, Ms. Anderson underwent HIPAA training that focused on safeguarding pharmacy information.

On July 22, 2013, the employer learned that Ms. Anderson had erroneously given a customer someone else's medication when she waited on the customer that day. Ms. Anderson had given the customer a medication for another customer with the same last name and had failed to give the customer his prescribed medication. The error occurred because Ms. Anderson did not ask the customer for his birth date and did not use the birth date information to match the customer with the right prescription. The customer did not realize the error until he got home.

Also on July 22, 2013, a customer complained after Ms. Anderson asked the pharmacist what a particular medication was for and the pharmacist responded that the medication was for bladder

incontinence. The conversation took place within hearing range of the customer whose prescription was being discussed and within hearing range of other customers.

On July 11, 2013, Mr. Brummer had notified Ms. Jordahl that Ms. Anderson allowed a customer to wait 15 minutes after his prescription was completed before she started to look for it. In the same message, Mr. Brummer told Ms. Jordahl that customer service had suffered that day because Ms. Anderson was not looking out for new, waiting customers.

On July 22, 2013, Ms. Jordahl met with Ms. Anderson and told her that as of that day, she would no longer be working as a pharmacy clerk. Ms. Jordahl told Ms. Anderson that she could, if she chose, work as a front checkout cashier for $9.00 an hour and for fewer hours than she had worked in the pharmacy. Ms. Anderson subsequently notified Ms. Jordahl that the demotion was unacceptable to her. Thus, Ms. Anderson's employment ended.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1 provides:

> An individual shall be disqualified for benefits:
>
> 1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

871 IAC 24.26(1) 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:
>
> (1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. Id. An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See Olson v. Employment Appeal Board, 460 N.W.2d 865 (Iowa Ct. App. 1990).

The evidence in the record indicates that Ms. Anderson voluntarily quit in response to substantial changes in the conditions of her employment. The substantial changes included a 25 percent reduction in hourly wage, from $12.00 to $9.00 per hour. The actual reduction in wages was greater than 25 percent in light of the employer's decision to make few hours available to Ms. Anderson than she had worked in the pharmacy. Ms. Anderson's voluntary quit was for good cause attributable to the employer. Ms. Anderson is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

This case could have been analyzed in the alternative as a discharge.

Iowa Code section 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.

871 IAC 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.

The employer has the burden of proof in a discharge matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The weight of the evidence establishes three specific incidents that the employer took into consideration when deciding to remove Ms. Anderson from the pharmacy clerk position The first was the medication error on July 22, 2013, wherein Ms. Anderson was negligent when she

failed to ask for the customer's birth date and match the birth date to the prescription. The error did indeed result in a HIPAA violation by disclosing prescription information pertaining to the customer whose medication was erroneously dispensed. The second incident that factored was Ms. Anderson's question to the pharmacist about the customer's prescription. That incident begs the question of why the pharmacist replied without ascertaining the basis for the question or whether it was in reference to a waiting customer. The matter involved an error in judgment on the part of Ms. Anderson and a more grievous error in judgment on the part of the pharmacist. The matter also did involve a HIPAA violation through open discussion of a waiting customer's medical condition. Neither incident appears to have involved an intention on the part of Ms. Anderson to act contrary to the employer's interests. The pharmacist's message to Ms. Jordahl on July 11 is insufficient to establish that Ms. Anderson in fact made a customer unnecessarily wait 15 minutes or more or that Ms. Anderson otherwise provided poor customer services. Ms. Anderson was a fairly inexperienced pharmacy clerk, having spent just six months in the position before Ms. Jordahl removed her from the position. The employer appears to have recognized that the conduct that prompted the employer to remove Ms. Anderson did not rise to the level of intentional misconduct. This explains why the employer was willing to move Ms. Anderson to another position. The weight of the evidence does not establish misconduct in connection with the employment sufficient to disqualify Ms. Anderson for unemployment insurance benefits.

DECISION:

The agency representatives August 16, 2013, reference 03, decision is reversed. The claimant quit the employment for good cause attributable to the employer. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/css