IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ASHLEY N BOUSSELOT
Claimant

QUAD CITIES AUTOMOTIVE GROUP LLC
LUJACK'S NORTHPARK AUTO PLAZA
Employer

APPEAL NO. 11A-UI-00316-HT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/28/10
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Ashley Bousselot, filed an appeal from a decision dated December 29, 2010, reference 02. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on March 15, 2011. The claimant participated on his own behalf and was represented by Douglas Stephens. The employer, Lujack's Northpark Auto Plaza (Lujack), participated by Human Resources Director Leann Zinn. Exhibits A and One were admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Amy Bousselot was employed by Lujack's from April 2, 2009 until December 1, 2010 as a full-time switchboard operator. At the time she was hired she received the employer's policies which included the attendance policies Any employee who is going to be absent for a scheduled shift must contact the direct supervisor personally.

On September 6, 2010, the claimant was approved for FML until September 16, 2010. After that a series of doctor's notes extended the leave. Ms. Bousselot received a written warning on September 30, 2010, because she had not come to work on September 24, 2010, and did not call in to report she was going to be absent, although the last doctor's note the employer had received as of that date specified she would return to work on that date. The warning also included the information that a no-call/no-show is considered grounds for discharge and her job was in jeopardy if it happened again.

The last doctor's note the employer received was dated November 16, 2010, which excused the claimant through November 22, 2010. She contacted Human Resources Director Leann Zinn on November 22, 2010, to say she was still not feeling well and would not be in that day,

although “the paperwork” should be faxed that day. No documentation was received by the employer because the doctor’s office sent it to the wrong fax number.

The employer attempted to text the claimant various times on November 24, 2010, using the phone number Ms. Bousselot had specified. The claimant had notified Ms. Zinn earlier that she had lost her own cell phone and the employer should use her mother’s cell phone number to contact her. The claimant did not respond to the text messages.

On November 26, 2010, Ms. Bousselot called the main switch board at 6:59 a.m., even though, as a switchboard operator herself, she knew the switchboard did not open up until 7:00 a.m. She left a voice mail message in the general voice mail box for Ms. Zinn to call her. It was her intention to tell the employer she would not be in to work on November 30, 2010, because she had another doctor’s appointment. At no time on that day did she attempt to call back after the switchboard opened even though she knew the policy required her to contact her supervisor directly. She did not offer an explanation for failing to try again on November 26 after 7:00 a.m. or on November 29, 2010.

On November 29, 2010, Ms. Zinn texted the claimant at the cell phone number which had been specified, stating that she had not received any doctor’s note excusing her for November 24, 26, 27 or 29, 2010, and any such notes were needed by the end of business on that day. The claimant did not receive the text message at that time because she was not regularly checking her mother’s cell phone, even though she had assured the employer that was the number to use to contact her.

After she received the employer’s text message on December 1, 2010, she made no attempt to contact the employer to explain the doctor’s note had been faxed on November 23, 2010, and she had not received the text message until a day after it was sent. She indicated she had “other things” she was dealing with and chose not to try and preserve her job by communicating with Ms. Zinn. The employer discharged the claimant effective December 1, 2010, for being no-call/no-show for several days in violation of the company policy.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(7) provides:

> (7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The claimant received the employer's policies at the time of hire and also a written warning reiterating the no-call/no-show policy on September 30, 2010. Ms. Bousselot did not make a diligent attempt to make sure the doctor's notes had been sent to, and received by, the employer. Instead she was content to abdicate responsibility for that to the doctor's office and made the assumption the employer had received it.

In any event the claimant must be considered a no-call/no-show on November 30, 2010, as she was expected to return to work that day but did not call and notify her supervisor or Ms. Zinn. Leaving a message on the general switchboard voice mail does not comply with the requirements of the company policy. In addition, it appears the claimant was deliberately attempting to avoid direct contact with the employer as she knew full well the switchboard would not be on at the time she called. It would have been less suspect if she had called in five or ten minutes after 7:00 a.m. on November 26, 2010, to err on the side of any differences in the company clock and her cell phone. Instead she deliberately called before there would be anyone to answer. She never followed up after leaving the message, again leaving it up to the employer to take responsibility to communicate rather than taking the responsibility herself to contact the employer.

The record indicates the claimant was no-call/no-show to work for several days without making any reasonable effort to communicate with the employer. This is unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

DECISION:

The representative's decision of December 29, 2010, reference 02, is affirmed. Ashley Bousselot is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

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Bonny G. Hendricksmeyer
Administrative Law Judge

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Decision Dated and Mailed

bgh/css