IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

KATHY MONAGHAN
Claimant

FAMILY DOLLAR STORES OF IOWA INC
Employer

APPEAL NO. 11A-UI-12905-ET

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05-15-11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 28, 2011, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 7, 2011. The claimant participated in the hearing. Linda Gunzenhauser, manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time cashier for Family Dollar Stores of Iowa from March 11, 2010 to June 1, 2011.

The claimant has a club foot and on May 2, 2011, she brought the employer a doctor's excuse taking her off work until May 17, 2011, because she had to wear a boot. Around May 10, 2011, the claimant went to the store to tell the employer she was ready to return to work but was told she could not come back early without a doctor's release. Because she could not go back to work, the claimant went to visit her daughter in Illinois for approximately one week. On May 15, 2011, the claimant's husband went into the store to tell the employer the claimant was out of town, so the employer changed her scheduled return date from May 17, 2011, to June 1, 2011.

On June 1, 2011, the claimant called the employer from the hospital, where her husband was waiting for gallbladder surgery. He was in a great deal of pain and medicated and while the claimant was telling the employer she could not come in that day and the employer was asking if she could try to make it, the claimant's husband said loudly into the phone that the claimant "fucking quit" and the employer hung up. The claimant called her back because she had no intention of quitting her job, but the employer stated she did not have time to talk about the situation. The claimant went in to talk to the employer a few days later and apologized for her husband's statement but explained he was very ill and medicated. The employer considered

her a three-day no-call no-show, had hired an employee to take her place, and would not let the claimant return to work. The claimant had not received any previous warnings about her attendance, but the employer planned to talk to her about her absences May 17 and June 1, 2011, when she did return to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). The claimant was off work with a doctor's excuse beginning May 2, 2011, because she had to wear a boot on her foot for a congenital birth defect. She wanted to return earlier than her May 17, 2011, release date, but misunderstood the employer and believed she could not come back while she was wearing the boot, rather than that the employer was simply asking for a doctor's release to allow her to

return early while wearing the boot. The claimant then went out of town and her husband went in May 15, 2011, and indicated the claimant was out of town and, consequently, the employer did not understand the claimant planned to return to work May 17, 2011, and took her off the schedule for that day and put her on the schedule for June 1, 2011. The claimant's husband was in the hospital awaiting gallbladder surgery June 1, 2011, when the claimant called the employer to state she could not work that date and the employer asked her to try to come in and the claimant's husband yelled into the phone that the claimant "fucking quit." The parties disagree on whether the claimant called the employer back after she hung up following the claimant's husband's comment and said she was not quitting and about whether the claimant came into the store a few days later to state she did not quit. Both parties were credible. The claimant did not want to quit her job; and without an intention to quit employment and an act to carry out that intention, the separation is not considered a voluntary leaving of employment. The question then becomes whether the claimant's actions evinced an intention to quit. The administrative law judge concludes they did not. The claimant's testimony that she called the employer back June 1, 2011, after her husband told the employer she quit and stated she was not quitting was credible. Neither party knows the next date the claimant next contacted the employer about keeping her job. Consequently, the administrative law judge must conclude the claimant did not quit her job but was instead discharged for no disqualifying reason. Therefore, benefits must be allowed.

DECISION:

The June 28, 2011, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder
Administrative Law Judge

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Decision Dated and Mailed

je/kjw