IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

AMANDA L CLARK
Claimant

EMPLOYMENT CONNECTIONS INC
Employer

APPEAL NO. 06A-UI-10171-SWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09/24/06 R: 01
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 17, 2006, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 13, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Rhonda Tenuta, and a witness Scott Steven. Jim Kitterman participated in the hearing on behalf of the employer with witnesses Jeff Merryman and Bob Seggerman. Exhibits 1 through 7 were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and would be considered to have quit employment after three days of absence without notice to the employer.

The claimant worked for the employer on an assignment at the Eaton Company as a factory worker from July 24, 2006, to September 15, 2006. She was injured at work on September 15, and received immediate treatment at the emergency room. She reported to the employer's place of business on September 16, 2006, where she completed a report of injury and acknowledgment of availability of light-duty work. The acknowledgment informed the claimant that the employer had a modified-duty program that allowed injured workers to return to work on a modified-duty basis by making accommodations for restrictions. The claimant checked that she would accept light-duty work.

The claimant was off work with a doctor's excuse until September 20, 2006. She went to her scheduled doctor's appointment on September 20 and her doctor released her to perform

light-duty work with a lifting restriction of five pounds until September 25, which was the time of her next appointment.

After that doctor's appointment, the claimant spoke to Bob Saggerman, a staffing coordinator. He offered her light-duty work in the employer's office for September 21 and 22, which would start the next morning at 8:00 a.m.

The claimant's normal work shift was from 3:40 p.m. until midnight. She and her fiancé have an infant child. Their childcare arrangement was that the claimant cared for the child during the day while her fiancé worked and her fiancé cared for the child while the claimant worked. The claimant told Saggerman she was unable to accept the work because she did not have childcare for the work shift he offered. Saggerman reminded her that she would not be paid for the two days and she said she understood that.

Even though Saggerman knew the claimant would not be reporting to work on September 21 and 22, the employer treated both days as unreported absences. The employer also treated September 25 as an unreported absence because the claimant did not come into the office that day or call to indicate she would not be in. The employer knew the claimant had a follow-up doctor's appointment that afternoon. She had called in that morning to notify the employer her cell phone was again working because she previously told Saggerman her cell phone was out of service. The employer treated the claimant's absences on September 21, 22, and 25 as unreported absences. Saggerman sent her a letter stating she had voluntary quit.

The claimant attended her doctor's appointment on September 25 in her work clothes for returning to work at Eaton Company because she expected to be released to return to work. Her doctor released her to return to work without restrictions. Saggerman was at the doctor's office when the claimant was finished with her appointment and informed her that the employer considered her to have abandoned her job due to her unreported absences.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992). The evidence is clear that the claimant never intended to quit her job and the employer initiated the separation from employment. The case must be treated 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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 discharged for allegedly being absent from work without notice on September 21, 22, and 25. The claimant was absent from work on September 21 and 22. The employer, however, was fully aware that she would not be reporting to work on either day. She had a legitimate reason for missing work because the employer offered her work on a shift different than her normal shift and she did not have childcare arranged for those hours. The claimant was not offered any work on September 25 and reasonably believed that any further work would depend upon the outcome of her doctor's appointment that day. No willful or substantial misconduct has been proven in this case.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, its account may be chargeable for benefits paid to the claimant based on this separation from employment.

DECISION:

The unemployment insurance decision dated October 17, 2006, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise
Administrative Law Judge

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Decision Dated and Mailed

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