IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

WENDY L SCHROEDER
Claimant

G&G LIVING CENTERS INC
Employer

APPEAL NO. 12A-UI-01171-HT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/25/11
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Wendy Schroeder, filed an appeal from a decision dated January 27, 2012, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on February 27, 2012. The claimant participated on her own behalf. The employer, G&G Living Centers, Inc. (G&G), participated by Human Resources Director Deb Hogan, ICF Manager Jill Grawe, Scheduler Kim Cook, CEO Lorrie, Manager Sarah Berns Meier and was represented by Arthur Gilloon. Exhibits One 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:

Wendy Schroeder was employed by G&G from August 16, 2005 until December 30, 2011 as a full-time support staff member. The facility cares for adults with physical and mental disabilities. At the time of hire the claimant received a copy of the employee handbook. Under the policies any employee who is no-call/no-show to work is subject to discharge. Attendance is important because there are legal requirements as to the proportion of support staff to consumers. In addition, disruption in routine can cause some of the consumers to engage in behaviors which are not only disruptive but can create a hazard to themselves and others.

On December 20, 2011, she received a written warning for failing to wash her hands before preparing food for a consumer and failing to grind up the food as required by the dietary plan. Food that is not ground up presents a choking hazard for this consumer. The warning notified her that her job was in jeopardy if there were any further rule violations.

She was no-call/no-show to work for two consecutive shifts on December 22 and 24, 2011. She maintained she was “too stressed” to come to work or to call in, although she was not too stressed to celebrate the Christmas holidays with family and friends away from her own home.

Ms. Schroeder did not respond to the numerous phone calls made to her until December 27, 2011. She spoke with Human Resources Manager Deb Hogan and admitted she knew she was to work those two days and she should have called in, but "just didn't." The matter was discussed with CEO Lorrie Meier. The claimant sent in a doctor's note dated December 27, 2011, which was received the next day. The note, written by the doctor's office even though the claimant was not seen by the doctor or even talked to by him, excused her from work from December 22, 2011 through January 1, 2012.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 claimant was discharged for conduct not in the best interests of the employer. She had been warned about not following safety rules in the preparation of food for the consumers. After that she was no-call/no-show to work for two consecutive shifts. She maintains she was "too stressed" to come into work but could not adequately explain why she was unable to pick up the phone and notify G&G she was going to be absent. Others had to fill in for her unreported absence, one employee working 11 hours. The absence resulted in "acting out" behaviors by the consumers which created problems for consumers and staff.

At the very least Ms. Schroeder could have had someone else call for her if she was too distraught, but the administrative law judge finds her assertion she was unable to call to be suspect. She was perfectly capable of participating in family celebrations away from her home

so she was not incapacitated. As for the doctor's excuse, it was provided after the no-call/no-shows and is also suspect as the doctor's office excused her retroactively without being interviewed or examined.

The record establishes the claimant was discharged for substantial, job-related misconduct. She is disqualified.

DECISION:

The representative's decision of January 27, 2012, reference 01, is affirmed. Wendy Schroeder is disqualified and benefits are withheld until she has earned ten times her` weekly benefit amount in insured work, provided she is otherwise eligible.

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Bonny G. Hendricksmeyer
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs