IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JODY L HARRIS
Claimant

CITY OF IDA GROVE
Employer

APPEAL NO. 13A-UI-09159-LT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/14/13
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 1, 2013, (reference 01) unemployment insurance decision that denied benefits based upon voluntarily quitting the employment. The parties were properly notified about the hearing. A telephone hearing was held on November 4, 2013. Claimant participated with Dan Daniel and mother Linda Kollbaum, and was represented by Mary Hamilton, Attorney at Law. Employer participated through Mayor of Ida Grove Dennis Ernst, library board president Tom Grell, former board president Larry Albrecht, city clerk Edie Ball, assistant librarian Denise Lageschulte, and library aide Lisa Hopkins. Employer's Exhibits 1 and 2 were received. Claimant's Exhibits A through H were received.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a librarian from August 4, 2012, and was separated from employment on April 2, 2013. She claims an exacerbation of back pain while shoveling snow at the library during the week of October 20, 2012, before the city council was going to meet at the library. City workers clear snow and she was not asked to do so. Her last day of work was sometime between mid-January and mid-February 2013, but she did attend a board meeting on February 18, as a part of her job duties. Her commute was an hour and a half. Claimant had not worked there long enough for Family Medical Leave Act (FMLA) eligibility. At that meeting she was told she could no longer work from home and must keep the board informed of her status. She presented excuses through February 24. The note dated February 11, 2013, indicated she would be off work until seen again in two weeks on February 25, at which time she may return to work, full duty, without restrictions. (Claimant's Exhibit A) The evening of February 25, claimant called Grell and told him she would not be able to return to work for an extended period of time and mentioned possible surgery in March 2013. (She had surgery on

March 12, 2013.) He instructed her to get other doctor excuses to him. Claimant faxed her medical excuses through March 25, 2013, and received a successful send receipt. She also dropped a copy in the book drop on February 25, 2013. (Claimant's Exhibit D, E) Dan Daniels took a hard copy over but the library was closed that day. She also had a medical excuse from March 26 through April 1, 2013. (Claimant's Exhibit F) The employer claimed not to have received any of them. No one on behalf of the employer followed up with claimant about medical documentation she referenced in her conversation with Grell.

Ernst recommended a special meeting of the library board on April 2, at 6 p.m. and hand-delivered an envelope with the notice between the storm door and entrance door of claimant's home and by certified mail on March 28, 2013. It advised her he would recommend the board terminate her employment because of her absenteeism and failure to communicate beyond February 25, 2013. (Claimant's Exhibit B) Albrecht wrote a similar letter, but without detail of the absenteeism beyond February 25, and directed her to return all library property no later than the meeting start time of 6 p.m. on April 2. He also told her that if she wished to resign, it would be accepted if received no later than 5 p.m. on April 2. (Claimant's Exhibit C) Claimant argued she did not receive the Ernst letter but she clearly received the Albrecht letter since her resignation letter was submitted just prior to the stated deadline. Grell did not have a personal intention to discharge her if she reported to the meeting and provided adequate explanation but he was no longer board president on April 2, and was unaware of the letters Ernst and Albrecht sent to claimant.

Claimant interpreted the Albrecht letter as a directive to quit or be fired. She e-mailed her resignation letter dated April 2, 2013 at 4:45 p.m. and had her husband hand-deliver a copy. Her resignation letter stated she resigned due to negative effects on her health but supplied no contemporaneous supporting medical advice to quit. She also referred to not being well-suited to the demands of the position and mentioned resigning rather than being discharged. At the end of the letter she indicated a desire to volunteer for the library at some point in the future. (Employer's Exhibit 1, redacted by employer at claimant's request and Claimant's Exhibit H) Ball confirmed the board's acceptance of her resignation. (Employer's Exhibit 2)

On November 4, 2013, Michael Luft, D.O. recommended sedentary work for her as her description of the library position as involving scooping snow was too physical. (Claimant's Exhibit G) There is no other medical information about her status after April 1, 2013.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for no disqualifying reason.

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.

871 IAC 24.26(21) 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:

> (21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989); *see also* Iowa Admin. Code r. 871-24.25(35). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

The employer clearly initiated the communication with claimant about the board meeting agenda. Because there was unclear communication between claimant and employer about the interpretation of both parties' statements about the status of the employment relationship; the issue must be resolved by an examination of witness credibility and burden of proof. Since most members of management are considerably more experienced in personnel issues and operate from a position of authority over a subordinate employee, it is reasonably implied that the ability to communicate clearly is extended to discussions about employment status. The employer's witnesses' testimony is inconsistent about whether claimant would have been allowed to continue working had she not resigned before the board meeting. However, Grell was the only employer witness who said he did not intend to fire her had she not resigned, but he was no longer board president at the time. Albrecht's and Ernst's letters carry more weight and they both indicated her termination would not only be recommended, but that she was to return all library property before the meeting and any resignation would only be accepted until one hour prior to the commencement of the meeting. This suggests that had she not resigned, she would have been fired at the board meeting. Therefore, the ALJ concludes since claimant would not have been allowed to continue working had she not resigned, the separation was a discharge, the burden of proof falls to the employer, and the issue of misconduct is examined.

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:
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> 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(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 employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. A determination as to whether an absence is excused or unexcused does not rest solely on the interpretation or application of the employer's attendance policy. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its

rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. Iowa Admin. Code r. 871-24.32(7); *Cosper*, supra; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007). Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit*, supra. The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Although Grell denies receipt of the medical documentation and excuses faxed to the library on February 25, 2013, the claimant has provided a fax receipt confirmation and the employer did not inquire further about documentation before sending the March 28, 2013, letters referencing the April 2, special board meeting. Inasmuch as claimant notified Grell about the intended absence period and had adequate medical documentation excusing her absences through at least March 25, 2013, and possibly April 1, 2013, the employer has not met the burden of proof to establish that claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. Because her absences were related to properly reported (February 25, 2013, fax to Grell) illness or injury, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed.

DECISION:

The August 1, 2013, (reference 01) decision is reversed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits withheld shall be paid to claimant.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs