IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

PAMELA A LUCASSEN
Claimant

ACT INC
Employer

APPEAL NO. 12A-UI-04344-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/25/12
Claimant: Appellant (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Pamela Lucassen filed a timely appeal from the April 13, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 9, 2012. Ms. Lucassen participated. Deb Schreiber, Talent Resource Partner, represented the employer.

ISSUE:

Whether Ms. Lucassen separated from the employment for a reason that disqualifies her for unemployment insurance.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Pamela Lucassen was employed by ACT as a full-time equipment operator from 2008 and last performed work for the employer on March 14, 2012. During the shift on March 14, 2012, Ms. Lucassen was arrested in the workplace on a warrant on a felony drug charge. Ms. Lucassen had learned during the shift that her husband had been arrested and anticipated that she would also be arrested shortly. In anticipation of the arrest, Ms. Lucassen asked a supervisor for the following two days off to address a family emergency. The supervisor, not knowing the actual basis for the time off request, approved the request, despite the fact that it was a busy time for ACT.

Ms. Lucassen's arrest appeared in the local newspaper. The employer was able to go the Internet and look up records regarding the arrest and pending charge.

On March 15, Ms. Lucassen's step-daughter advised the employer of that Ms. Lucassen was being held in jail and would likely be released from jail sometime the following week. The employer asked that the step-daughter have Ms. Lucassen telephone the employer before she returned to work.

On March 16, 2012, the employer prepared and mailed a letter notifying her that her employment was deemed ended effective March 16, 2012.

On Monday, March 19, Ms. Lucassen telephoned the employer from jail. Ms. Lucassen had not yet received the employer's letter. On March 19, the employer advised Ms. Lucassen that her employment had been terminated.

Ms. Lucassen remained in jail until she bonded out on March 23, 2012.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

A claimant is deemed to have left employment without good cause attributable to the employer if such claimant becomes incarcerated. See 871 IAC 24.25(16).

At the time the employer prepared and mailed the discharge letter, Ms. Lucassen had been incarcerated and away from the employment on March 14, 15 and 16. At that point, the employer knew that Ms. Lucassen's "family emergency" was actually arrest and incarceration. The employer did not know when Ms. Lucassen would return. A reasonable person would not have put much weight in the step-daughter's assertion that Ms. Lucassen would be out of jail the following week. The employer wanted to cut ties with Ms. Lucassen. At the time Ms. Lucassen spoke to the employer the next Monday, she was still incarcerated. Indeed, she continued to be incarcerated for four more days after that call.

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.

The administrative law judge concludes that Ms. Lucassen's separation was indeed a voluntary quit without good cause attributable to the employer under the applicable law referenced above. Ms. Lucassen is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Lucassen.

Even if the administrative law judge had found the separation to be based on a discharge from the employment, the outcome in the case would be the same.

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.

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's *unexcused* absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

Ms. Lucassen's absences on March 14, 15 and 16 were all unexcused absences under the applicable law. Ms. Lucassen had requested March 15 and 16 off under false pretense without disclosing to the supervisor that she needed the time to deal with a criminal charge. In any event, Ms. Lucassen's absences on March 14, 15 and 16 were all based on matters of personal responsibility. Under the circumstances, the unexcused absences were excessive and constituted misconduct in connection with the employment that would disqualify Ms. Lucassen for unemployment insurance benefits.

DECISION:

The Agency representative's April 13, 2012, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

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