IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JANELLE L NICHOLS
Claimant

THE FILLING STATION INC
Employer

APPEAL NO: 12A-UI-03750-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/13/11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The Filling Station, Inc. (employer) appealed a representative's April 2, 2012 decision (reference 06) that concluded Janelle L. Nichols (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 26, 2012. The claimant participated in the hearing and presented testimony from one other witness, Alisha Swanson. Terry Jones appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on June 30, 2011. She worked full time as a clerk at the employer's convenience store. Her last day of work was February 4, 2012. The employer discharged her on February 5, 2012. The reason asserted for the discharge was her failure to report for her shift on that date.

The claimant normally worked from 2:00 p.m. to 10:00 p.m. on Tuesdays, Saturdays, and Sundays, and 6:00 a.m. to 2:00 p.m. on Wednesdays and Thursdays, so on Sunday, February 5 she was scheduled to work the shift beginning at 2:00 p.m. That morning she had gone with her sister to Des Moines, about two hours away, to try to get the car that her sister shared with her boyfriend out of impound, because the boyfriend had been arrested and the car impounded. This became a much more complicated and difficult process than they had anticipated. At about 1:45 p.m. the claimant's sister called their mother and asked that she call the claimant's adult daughter, Swanson, who had the claimant's cell phone; the message to the claimant's

daughter was for her to call the employer's store manager and report that the claimant would not be there at least for the start of her shift. Swanson did send a text message to the store manager indicating that the claimant would not be there at least for the start of her shift. The store manager got the impression or understanding that the claimant might be there before the end of the shift or would recontact the employer. However, the claimant did not return to the area until about 10:00 p.m., when the store closed; she had not arranged for any recontact to the employer to update them on her status.

At about 9:00 p.m. the employer's president, Jones, called the claimant's phone and spoke to Swanson; he directed that the claimant needed to turn in her keys, that the claimant's employment was ended. The store manager also sent a text message to the claimant's phone instructing that the claimant was to turn in her keys. The reason the employer determined to discharge the claimant was because she had not recontacted the employer and had been absent from work on February 5. The claimant had not had a prior record of unexcused absences and had received no prior disciplinary warnings.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is in effect her absence from work on February 5. Excessive unexcused absences can constitute misconduct. 871 IAC 24.32(7). However, even if this single instance is treated as unexcused, it does not establish excessive unexcused absences. Further, in order to establish the necessary element of intent, the final incident must have occurred despite the claimant's knowledge that the occurrence could result in the loss of her job. *Cosper*, supra; *Higgins v. IDJS*, 350 N.W.2d 187

(Iowa 1984). The claimant had not received any warning to this effect. Under the circumstances of this case, the claimant's absence and lack of communication on February 5 was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.[1]

DECISION:

The representative's April 2, 2012 decision (reference 06) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs

[1] To the extent the employer may believe that a single no-call, no-show alone might establish a voluntary quit, that is not the case. The intent to quit can be inferred in certain circumstances, and, a three-day no-call, no-show in violation of company rule is considered to be a voluntary quit. 871 IAC 24.25(4). A one-day no-call, no-show does not satisfy this provision and cannot alone be used to infer a voluntary quit under Iowa Code Chapter 96. Further, as the employer communicated to the claimant that same day that her employment was ended, the claimant's subsequent actions did not demonstrate the intent to sever the employment relationship necessary to treat the separation as a "voluntary quit" for unemployment insurance purposes. Therefore, the single no-call, no-show is simply treated as an unexcused absence and the analysis is then whether there were excessive unexcused absences.