IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

NICOLE L PIERSEL
Claimant

GIT-N-GO CONVENIENCE STORES INC
Employer

APPEAL NO: 11A-UI-11074-DWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/21/08
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's August 19, 2011 determination (reference 04) that disqualified her from receiving benefits and held the employer's account exempt from charge because she voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant participated in the hearing with a witness, Keith Piersel, her husband. John Judge appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits, or did the employer discharge her for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 3, 2011. The employer hired her to work as a part-time cashier.

The claimant worked as scheduled on July 8. The late evening hours of July 8, the claimant became so ill that her husband took her to the emergency room. The claimant was not released from the emergency room until the next morning, July 9. The claimant was on pain medication and went to sleep. The emergency room physician gave the claimant a work restriction stating she was unable to work on July 9.

The claimant's husband understood she was scheduled to work at 3 p.m. and knew she was unable able to work her shift. He first called the assistant manager, A., to report that the claimant was ill and unable to work. A. was unable to cover the claimant's shift and told Keith to contact the store manager, T., to let her know the claimant was unable to work. When T. told Keith the claimant would have to find someone to cover her shift, he told her that he had already contacted A. and was told to call her. T. initially told Keith she would take care of the issue. A short time later, T. called Keith again and cursed at him because she did not believe the claimant had the problem the doctor diagnosed. Keith hung up on T. because he was not her employee and did not believe he had to listen to her berating and arguing with him.

On July 10, the claimant felt better and planned to work. She first called T. and left a message for her. The claimant then went to the store to give A. her doctor's statement for July 9. T. called the claimant and told her she should look for another job and her 3 p.m. shift on Sunday had already been covered. Although the claimant was scheduled to work on Monday, she did not go to work because she understood she had been fired on Sunday when T. told her to look for another job.

The claimant established a claim for benefits during the week of December 21, 2008. The employer is not one of base period employers. Until the claimant establishes a new benefit year, the employer is not a base period employer.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. Since the employer relied on information from T. and A. who did not testify at the hearing, the claimant's testimony about what was said on Sunday, July 10, is credible. Even though T. works at another store, the employer could have easily had her present testimony at the telephone hearing, but did not. The claimant's testimony must be given more weight than the employer's reliance on unsupported hearsay information. As a result, the credible evidence does not establish that the claimant told A. she quit on Sunday, July 10. It was reasonable for the claimant to conclude T. discharged her when T. told her she was not needed on Sunday and she should look for another job. The evidence establishes T., the store manager, discharged the claimant on July 10, 2011.

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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

While the claimant's illness may have created some hardships for T., the claimant did not intentionally fail to work as scheduled on Saturday, July 9. After being treated by an emergency room physician, she was restricted from working on July 9. The claimant planned to work on Sunday until T. told the claimant that she was not needed because her shift was covered. On July 13, the claimant only signed a termination form so the employer would hand over her paycheck. The claimant did not indicate on the form why she no longer worked for the employer.

T. was understandably upset when she had to find someone to cover the claimant's Saturday shift. The claimant did not, however, intentionally fail to work as scheduled nor did she substantially disregard the employer's interests. The evidence does not establish that she committed work-connected misconduct. As of July 10, 2011, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements.

The employer is not currently a base period employer. An employer's account is not charged when it is not a base period employer.

DECISION:

The representative's August 19, 2011 determination (reference 04) is reversed. The claimant did not voluntarily quit her employment. Instead, the claimant reasonably believed the employer discharged her on July 10, 2011. While the employer had business reasons for discharging the claimant, she did not commit work-connected misconduct. As of July 10, 2011, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. Since the employer is not one of the claimant's base period employers, its account will not be charged.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs