IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DEANNA L MOORE
Claimant

GYPSUM CREEK HEALTHCARE INC
Employer

APPEAL NO. 13A-UI-13712-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/17/13
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Quit
Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Gypsum Creek Healthcare (employer) appealed a representative's December 6, 2013, decision (reference 01) that concluded Deanna Moore (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 8, 2014. The claimant participated personally. The employer participated by Brett Asay, Administrator.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 6, 2012, as a full-time director of rehabilitation and treating therapist. The claimant signed for receipt of the employer's handbook on June 6, 2012. The claimant and the administrator had conversations about the inadequacies of the employer's system and how that system caused problems in the claimant's performance of her job. Patients were supposed to be treated by the claimant within forty-eight hours and that information was sent by fax to the nurse. The nurse did not provide the fax to the claimant until after the forty-eight hours had expired. One patient did not receive treatment from a nurse until the claimant brought it to the administrator's attention. The nurses were under the direction of the administrator.

On October 17, 2013, the employer issued the claimant a performance improvement plan due to her productivity, management, contribution, lack of ownership and leadership. The employer notified the claimant that further infractions could result in termination from employment. The claimant was supposed to prepare a marketing plan within thirty days and a staff schedule. The claimant prepared a marketing report on November 15, 2013, and a staff schedule. The staff schedule was difficult to prepare because the employer had hired too few full-time employees. Most of the employees worked as needed and the claimant could not meet the staffing needs of the employer with the workers the employer had hired.

On November 15, 2013, the employer terminated the claimant for preparing a marketing report and not a marketing plan. The claimant did not know there was a difference in the two. This was the first marketing plan the claimant was to create and the employer did not inform the claimant of the requirements of a marketing plan. The employer also terminated the claimant because there were gaps in the staffing schedule.

The claimant filed for unemployment insurance benefits with an effective date of November 17, 2013. She received $2,195.00 in benefits after the separation from employment. The employer is unaware if anyone participated at the fact finding interview on December 5, 2013.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant voluntarily quit without good cause attributable to the employer. For the following reasons the administrative law judge concludes she did not.

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.

If an employee is given the choice between resigning or being discharged, the separation is not voluntary. The claimant had to choose between resigning or being fired. The claimant's separation was involuntary and must be analyzed as a termination.

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct connotes volition. A failure in job performance which results from inability or incapacity is not volitional and therefore not misconduct. Huntoon v. Iowa Department of Job Services, 275 N.W.2d 445 (Iowa 1979). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988). The employer discharged the claimant for poor work performance and has the burden of proof to show evidence of intent. The employer did not provide any evidence of intent at the hearing. The claimant's poor work performance was a result of her lack of training with regard to how to produce a marketing plan and a schedule with too few full-time employees. Consequently the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's December 6, 2013, decision (reference 01) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs