IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

CHRISTINE J WATSON
Claimant

PINNACLE HEALTH FACILITIES XVII LP
Employer

APPEAL NO. 09O-UI-08301-LT

ADMINISTRATIVE LAW JUDGE AMENDED DECISION

OC: 03/15/09
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Leaving
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

An appeal was filed from an unemployment insurance decision dated April 20, 2009, reference 01, which denied benefits. A telephone hearing was held by telephone conference call on July 23 and July 29, 2009. On July 23 claimant participated with her son Thomas Sennett. Employer participated through John Beaudette, administrator; and Steve Wright. On July 29 claimant participated with Connie White, Boone County supported community living worker, and employer participated through John Beaudette and called Ken Weichman as a witness who was not available when the hearing was called. Claimant's Exhibit A was admitted to the record.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer or if she was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a housekeeper and laundry worker and was separated on August 24, 2008. In August 2008 Marty Prouty was her supervisor and in Sennett's presence she asked him for a medical leave of absence for a personal medical issue, which he verbally approved. In late August 2008 White went with her to fill out a medical leave application with business office manager Robin Reitz and saw Schultz sign it. Claimant did not keep, nor did employer give her a copy of the medical paperwork. She received no further requests for information or communication from employer. At some point in September or October claimant returned to employer to request more time off because of continuing medical difficulties. Schultz was not present so she made the request to someone else who said they would pass along the information to the administrator. There was no response either granting or denying the additional time.

On November 3, 2008 Beaudette became administrator and Prouty's replacement was Jamie Lynch. None of the same supervisors or administration from August 2008 is still employed at the facility. On January 3, 2009 claimant was released to return to work without restriction and she reported to Lynch who said she must present medical documentation. She did so on January 5 and Lynch told her she must submit an application for employment. Her last day of work was August 24, 2008 and employer's file indicates that the separation was due to medical issues. Employer keeps separate folders for personnel and medical issues and had some medical excuses for other individual absences but no medical leave documentation. Claimant received the policy about leaves of absence in her copy of the employee manual at hire and orientation in March 2006; however White reports that claimant has difficulty in comprehension and writing numbers in daily circumstances. The administrative law judge (ALJ) did not initially observe anything unusual about claimant's participation in the hearing that other unfamiliar parties have not demonstrated but as the hearing went on and was continued to a second date, it became more apparent that claimant does have more difficulty understanding and answering a direct question than does a typical legally unsophisticated participant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not quit but was discharged for no disqualifying reason and is able to and available for work.

Iowa Code § 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:
>
> d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

871 IAC 24.25(35) provides:

> Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:
>
> (35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

(a) Obtain the advice of a licensed and practicing physician;

(b) Obtain certification of release for work from a licensed and practicing physician;

(c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or

(d) Fully recover so that the claimant could perform all of the duties of the job.

Iowa Code § 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.

Although employer is not obligated to provide light duty work for an employee whose illness or injury is not work related, the involuntary termination from employment while under medical care was a discharge from employment. Since employer apparently did not grant the leave request and separated her involuntarily on the date she believed her medical leave began, no disqualifying reason for the separation has been established. Benefits are allowed, provided claimant is otherwise eligible.

Iowa Code § 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

> 3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(1)a provides:

> Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.
>
> (1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.
>
> a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

871 IAC 24.23(35) provides:

> Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.
>
> (35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

Inasmuch as the medical condition was not work-related but employer involuntarily terminated the employment before she was released to return to work without restriction, claimant has established her ability to and availability for work.

DECISION:

The April 20, 2009, reference 01, decision is reversed. The claimant did not quit but was discharged for no disqualifying reason. Claimant is able to and available for work effective March 15, 2009. Benefits are allowed, provided she is otherwise eligible.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs