IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MONICA S KLEIN
Claimant

ALGONA CARE CENTER
Employer

APPEAL NO. 14A-UI-00072-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/08/13
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Monica Klein (claimant) appealed a representative's December 24, 2013, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Algona Care Center (employer) for failure to follow instructions. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 28, 2014. The claimant was represented by Jonathan Murphy, Attorney at Law, and participated by participated personally. The employer was represented by Becky Knutson, Attorney at Law, and participated by Sheryl Huffman, Nursing Home Administrator, and Serena Reemtsma, Director of Nursing. The claimant offered and Exhibit One was received into evidence. The employer offered and Exhibit One, Two, Three, Four, Five, and Six were received into evidence.

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 May 9, 1990, as a part-time licensed practical nurse. The claimant signed for receipt of the employer's handbook. The employer did not issue the claimant any warnings during her employment.

The clamant suffered from a non-work-related knee injury and did not work after September 27, 2013. The claimant sent the employer texts with information about doctor's appointments. The claimant sent pictures of her doctor's notes to her employer. On October 2, 2013, the claimant had surgery and the employer realized the claimant was going to be away from work for some time for her knee injury. The employer did not notify the claimant of her eligibility for Family Medical Leave (FMLA) within five business days. The claimant's physician continued to restrict her from working.

On November 19, 2013, the employer sent the claimant a text. "Have you filled out a FMLA form? If not you need to." The claimant responded, "Whats [sic] a fmla" The employer said, "Family medical leave act. I'm sure you did it when you had a baby while working here. Angie has them. The claimant asked, "Why do I hav [sic] to sign...what is it for". The employer said, "For extended leaves…unless you think you will get released tomorrow but sounds like you don't think so???" The claimant had not completed FMLA paperwork for four pregnancies and three surgeries. Her co-workers who had surgery had not taken FMLA.

The employer and the claimant did not discuss FMLA paperwork again. On November 21, 2013, the claimant's husband collected the claimant's paycheck at her work. Attached to her paycheck was a Notice of Eligibility and Rights & Responsibilities (Family and Medical Leave Act). The paperwork did not have any instructions. There was a blank next to the line that read "you must return the following information to us by…". The employer did not fill in any blanks on the form. The claimant was not told who to contact. On December 6, 2013, the employer mailed the claimant a letter ending her employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant did not voluntarily quit work.

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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). Although the employer regards this separation as a voluntary quit, Iowa law requires that there be an intent on the part of the claimant to quit and an overt act that shows that intent. The claimant here did not quit her job. She was separated from her employment by the employer. This is not a voluntary quit.

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). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). The claimant is eligible for unemployment insurance benefits. Issues surrounding separations of employment for medical reasons and subsequent entitlement to unemployment insurance benefits are among the most challenging in unemployment insurance law. The evidence in this case showed that the claimant was discharged for failure to return documentation by December 6, 2013. The claimant was not told she had to return the documentation by that date. The employer did not provide clear instructions for the claimant to follow. The claimant's failure to follow instructions was a result of the employer's lack of instructions. Consequently the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's December 24, 2013, decision (reference 01) is reversed. 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