IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ARMISSIE BARQUEST
Claimant

THE AMERICAN BOTTLING COMPANY
Employer

APPEAL NO. 11A-UI-10402-ET

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07-10-11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 4, 2011, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 2, 2011. The claimant participated in the hearing. Julie Montgomery, human resources manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time machine operator for The American Bottling Company from September 12, 1996 to July 13, 2011. She was discharged for excessive unexcused absenteeism. The claimant took a personal day January 24, 2011, and received one point, for a total of three points during her rolling calendar year. She took a personal day and received one point for a total of four points May 18, 2011. One of her attendance points dropped off in May 2011. She was absent due to properly reported illness June 21, 2011, and received one point for a total of four points. The claimant was a no-call, no-show July 11 and July 12, 2011, and was assessed one point for each absence, for a total of six points, and her employment was terminated July 13, 2011, for exceeding the allowed number of attendance points. The claimant's car broke down on the highway on her way to work July 11, 2011, and it took several hours for her to reach someone to help her. She admits she should have called the employer after being picked up but did not have her supervisor's phone number with her at the time and did not call because she was so late. On July 12, 2011, she had to babysit her granddaughter because her two-year-old grandson had to go to Iowa City for medical treatment of a chronic condition that flared up. She did not get cell phone reception at her daughter's house in Bonaparte, Iowa, which was one hour from her home, and her daughter does not have a land line. She expected her daughter and husband to be back in time for her to be at work on time at 3:30 p.m., but she did not get home until 8:00 p.m. She could not explain why she did not use her daughter's or her husband's cell phone to call the employer when they returned from

Iowa City or why she did not call herself when she got home. The claimant received a four-point warning letter May 20, 2011, after accumulating four points with her absence May 18, 2011, and another four-point warning letter June 28, 2011, following her June 21, 2011, absence. No-call, no-show absences are assessed one point, as are properly reported absences.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

871 IAC 24.25(4) 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 section 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 section 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The employer has the burden of proving disqualifying misconduct. 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 substantial and 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). Iowa law requires three consecutive no-call, no-show absences for an employee to be considered to have voluntarily quit her job and, consequently, the employer terminated the claimant's employment for excessive unexcused absenteeism. While the claimant did exceed the allowed number of attendance points and had two no-call, no-show absences at the conclusion of her employment, five absences in seven months is not necessarily excessive. There is no doubt that the claimant should have called and reported her absences July 11 and 12, 2011, but she was not penalized any differently for those absences than if she was simply absent and called in to state she would not be at work on those dates. The claimant worked for the employer for nearly 15 years without violating the attendance policy to the point of termination. Five absences in seven months, even if unexcused, do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, while not condoning the claimant's actions in failing to call and report her final two absences, benefits are allowed.

DECISION:

The August 4, 2011, reference 02, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

_____
Julie Elder
Administrative Law Judge

_____
Decision Dated and Mailed

je/kjw