IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

DEBRA S CLEMON
Claimant

MUNICIPAL CREDIT UNION
Employer

APPEAL NO. 18A-UI-00126-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/10/17
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Debra Clemon (claimant) appealed a representative's December 27, 2017 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Municipal Credit Union (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 30, 2018. The claimant was represented by David Reinschmidt, Attorney at Law, and participated personally. The claimant's husband, Warren Clemon, observed the hearing. The employer participated by Roger Hake, Chief Executive Officer.

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 April 3, 2008, and for most of her employment she was working as a full-time operations officer. The employer had a handbook but the claimant did not receive a copy of it. The employer did not issue the claimant any warnings during her employment. The employer did not have problems with the claimant's attendance.

On May 2, 2017, the employer was robbed and the claimant was the teller who was approached by the assailant. The claimant was diagnosed with post-traumatic stress disorder PTSD. The employer provided counseling opportunities for the claimant.

On November 15, 2017, the claimant had a headache and told the assistant manager she was going home. She forgot to tell the chief executive officer (CEO) she was leaving. The employer never had problems with the claimant's attendance. On November 16, 2017, the claimant sent the CEO a text saying she was still sick and would not be at work. The CEO called the claimant later that day and told her she was suspended without pay until November 27, 2017. The claimant requested some vacation pay and a member of the board to be present at the meeting on November 27, 2017, when she returned. Later, the CEO changed the date of the meeting to November 28, 2017.

On November 28, 2017, the claimant met with the CEO, the board president, and the board member she asked to be present. The CEO presented the claimant with a document and told the claimant to sign it. The document was dated November 16, 2017. It said the claimant was suspended until November 27, 2017. The claimant was to acknowledge the suspension and abide by its conditions. The claimant was to change her attitude toward her job. The CEO saw the claimant as unhappy and upset. Based on his non-medical personal experience, he thought the claimant's PTSD was a pre-existing issue. The CEO tried to "put up with the claimant for a time" and "let it roll off his back".

The claimant did not understand the document and the dates. She did not know she could be terminated if she did not sign it. She thought she was suspended for forgetting to tell the CEO she left work. The claimant told the CEO she would not sign the document. The CEO terminated the claimant.

REASONING AND CONCLUSIONS OF LAW:

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, regardless of the source of the individual's wage credits:
>
> 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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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 serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation.

Inasmuch as the employer had not previously warned the claimant about any of the issues leading to the separation, it has not met the burden of proof to establish the claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer did not provide sufficient evidence of job-related misconduct. It did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's December 27, 2017, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs