IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

RHONDA D EPLEY
Claimant

COMPASS GROUP USA INC
Employer

APPEAL NO. 17A-UI-04885-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/16/17
Claimant: Respondent (1)

Section 96.5-1 - Voluntary Quit
Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Rhonda Epley (employer) appealed a representative's May 1, 2017, decision (reference 01) that concluded Rhonda Epley (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 25, 2017. The claimant participated personally. The employer participated by Michael Aegerter, Customer Service Manager. Exhibit D-1 was 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 March 4, 2015, as a full-time warehouse representative/picker. She told the employer when she was hired she had previous back surgery. The employer told her the previous surgery was not a problem. The claimant could lift twenty-five to thirty-five pounds of carbonated beverages throughout the day. She worked 7:00 a.m. to 5:00 p.m. Monday through Thursday, but she could control her schedule.

During the claimant's employment the employer asked the claimant to move heavier amounts of beverages. This aggravated the claimant's back problems and she reported it to the employer. The employer understood that the claimant's back issues were aggravated by her work but did not send her to its doctor or complete a first report of injury.

On April 11, 2017, the employer met with claimant and told her that in the near future it would be changing her hours to 11:30 a.m. to 7:00 p.m., Monday through Thursday. The employer did not want the claimant to pull orders until after 12:30 p.m. The claimant said she did not want to change her hours. The employer showed the claimant a job description sheet for a warehouse assistant product picker. The description required the employee to lift twenty-five to forty-five

pounds and up to eighty-five pounds on occasion. The claimant had never seen this document before. She did not sign it on April 11, 2017, and told the employer she was unable to lift the weight required.

On April 12, 2017, the claimant sent a text to the employer saying she would arrive at work at 9:00 a.m. in an attempt to accommodate the later hours. She worked until 11:30 a.m. and had no other jobs to perform except for picking order. Picking orders could not start until 12:30 p.m. The claimant took a lunch break at 11:30 a.m., told a co-worker she was leaving for lunch, and sent a text to the employer to explain her reasons for taking the early lunch.

The employer called the claimant and asked if she had gone home for lunch. The claimant said she did. The employer asked her if she planned on returning because he was not sure she could do the job. The claimant admitted she could not lift the weight the employer wanted her to lift. The claimant asked if the employer could accommodate her back issue. The employer would not and told her to have Des Moines put her accrued sick days and vacation on her final check. The employer said he was sorry. The claimant assumed

The claimant filed for unemployment insurance benefits with an effective date of April 16, 2017. The employer did not participate in the fact finding interview on April 28, 2017, because its representative company did not notify it of the interview.

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.

Iowa Code § 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). The claimant had no intention to leave. The claimant's separation was involuntary and must be analyzed as a termination.

The issue becomes whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes she was not.

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.

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). The employer did not provide any evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's May 1, 2017, decision (reference 01) is affirmed. 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