IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

RICHARD W LOWELL
Claimant

DOLLAR TREE STORES INC
Employer

APPEAL NO. 17A-UI-08847-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/16/17
Claimant: Respondent (5)

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

STATEMENT OF THE CASE:

Dollar Tree Stores (employer) appealed a representative's August 18, 2017, decision (reference 01) that concluded Richard Lowell (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 September 18, 2017. The claimant participated personally. The employer participated by Amy Helein-Lay, Human Resources Manager, and Daniel Clark, District Manager. The claimant offered and Exhibits A and B were received into evidence. 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 in June 2015, as a full-time store manager. The claimant signed for receipt of the employer's handbook. The employer did not issue the claimant any warnings during his employment.

The claimant had an employee with medical restrictions who made allegations against the claimant of spying, cybercrimes, and stealing. The employee threatened the claimant while he was off the clock and stopped talking to him. The claimant reported the behavior to his district manager and regional human resources manager. The district manager knew the claimant and co-workers were afraid of the employee. The regional human resources manager was investigating the employee.

For a period of time the employee was on medical leave. In July 2017, the regional human resources manager told the claimant to put the employee back on the schedule. On July 13, 2017, the regional human resources manager called and asked the claimant why the employee was not on the schedule. The claimant said he had already written the schedule for the week.

On July 14, 2017, the claimant received an e-mail directive from the regional human resources manager about putting the employee on the schedule. On July 19, 2017, the regional human resources manager contacted the claimant about why the employee was still not on the schedule. The claimant said the person was a safety risk to himself and others. He asked what would happen if he did not schedule the employee. The regional human resources manager told the claimant he could resign. The claimant asked her about transfers, working at two different locations, or third party arbitration agreements. The regional human resources manager told him there were only two choices.

The claimant sent his district manager an e-mail about the conversation with the regional human resources manager. He said something needed to be done because he could not work with the employee. On July 20, 2017, the district manager called the claimant and asked for the keys to the store because the regional human resources manager told him the claimant had quit work.

The claimant filed for unemployment insurance benefits with an effective date of July 16, 2017. The employer participated personally at the fact finding interview on August 16, 2017, by Dan Clark.

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, regardless of the source of the individual's wage credits:
>
> 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 did not intend to leave. The separation cannot be considered voluntarily.

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

DECISION:

The representative's August 18, 2017, decision (reference 01) is modified with no effect. 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