IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

SARA L REIFF
Claimant

CARE INITIATIVES
Employer

APPEAL NO: 11A-UI-04765-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/06/11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Sara L. Reiff (claimant) appealed a representative's decision entered March 3, 2011 (reference 02) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Care Initiatives (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 25, 2011. This appeal was consolidated for hearing with one related appeal, 11A-UI-04766-DT. The claimant participated in the hearing. David Williams of TALX Employer Services appeared on the employer's behalf and presented testimony from one witness, Amanda Braddac. One other witness, Mike Terril, was available on behalf of the employer but did not testify. During the hearing, Employer's Exhibits Two and Six were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant's appeal timely or are there legal grounds under which it should be treated as timely?

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The representative's decision was entered into the Agency system on March 3, 2011. Normal procedure would have resulted in a decision being printed and mailed on March 4, 2011, with a deadline for appeal of March 14. However, no decision was actually printed and mailed to the parties. The claimant appealed on April 11, 2011 when she learned of the entry of the decision at a local Agency office.

The claimant started working for the employer on April 7, 2010. She worked full time as an assistant director of nursing at the employer's Dubuque, Iowa facility. Her last day of work was February 7, 2011. The employer discharged her on that date. The stated reason for the discharge was not being available as required when on call after prior warning.

The claimant was normally scheduled to provide on-call coverage on an every other week basis. On the weekend of February 5 the claimant was on her regular on-call schedule; she had previously additionally covered the prior week due to a vacation by Ms. Braddac, the director of nursing. On February 5 the claimant was called at about 1:00 p.m. to come in to assist in a new admission coming from a hospital. When Ms. Braddac called the claimant, the claimant refused, indicating only that she had worked the previous five days and that she had covered the prior weekend. Ms. Braddac then told the claimant not to come in on Monday, February 7 until she was summoned.

The claimant did not inform Ms. Braddac until she was summoned and came in on February 7 that at least an aspect of her refusal was because she did not have childcare for her two-year-old child. Normally on weekends the claimant's childcare coverage was provided by her husband or her parents-in-law. On February 5 the claimant's husband had gone into his work at about 6:00 a.m. and her in-laws had informed her at about 10:00 a.m. that they were going out of town. The claimant had lived in the area for about two years, but had not cultivated any other alternative childcare arrangements. While she had taken her child in to work on other occasions when she had been called in, she did not believe it would be feasible to do so to handle an admission on February 5. She did not indicate the childcare issue to Ms. Braddac at the time of the call on February 5 as she did not believe it would make any difference.

The claimant had received prior steps of the disciplinary process from the employer, including a final warning on February 2, 2011. The final warning was also with regard to not being available to provide coverage when on call, although in that instance her unavailability was due to being snowbound. She had also received an additional prior warning for failing to be available when on call on August 19, 2010, when she did not awaken and answer her phone when called.

As a result of the claimant's refusal to provide coverage when on call on February 5 after the prior warnings, the employer discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this case is whether the claimant timely appealed the representative's decision. Iowa Code § 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by the decision.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. Gaskins v. Unempl. Comp. Bd. of Rev., 429 A.2d 138 (Pa. Comm. 1981); Johnson v. Board of Adjustment, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows that the decision was never mailed to the parties. Therefore, the record shows that the appellant did not have a reasonable opportunity to file a timely appeal. Franklin v. IDJS, 277 N.W.2d 877, 881 (Iowa 1979); Beardslee v. IDJS, 276 N.W.2d 373, 377 (Iowa 1979); In re Appeal of Elliott, 319 N.W.2d 244, 247 (Iowa 1982). Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973).

The administrative law judge concludes that failure to be able file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to Agency error or misinformation

pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the appeal should be treated as timely filed pursuant to Iowa Code § 96.6-2. Therefore, the administrative law judge has jurisdiction to make a determination with respect to the nature of the appeal. See, Beardslee, supra; Franklin, supra; and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's refusal to respond as required when on call after prior warnings shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. While the claimant did not even advise the employer as to what her true issue, lack of childcare, was so that the employer might had had an opportunity to address that issue, missing required work due to matters that are of purely personal responsibility, specifically including having adequate childcare arrangements, are not excusable. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984); Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984). The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's March 3, 2011 decision (reference 02) is affirmed. The appeal in this case is treated as timely. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of February 7, 2011.

This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

_____
Lynette A. F. Donner
Administrative Law Judge

_____
Decision Dated and Mailed

ld/css