IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

BARBARA M BROWN
Claimant

JENNIE EDMUNDSON MEMORIAL HOSP
Employer

APPEAL NO: 15A-UI-00956-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/16/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Barbara M. Brown (claimant) appealed a representative's January 14, 2015 (reference 03) decision that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Jennie Edmundson Memorial Hospital (employer). After hearing notices were mailed to the parties' last-known addresses of record for a related appeal, a telephone hearing was begun on January 23, 2015; that hearing was recessed and then reconvened and concluded on February 17, 2015. This appeal was consolidated for hearing with related Appeal No. 14A-UI-13360-DT and Appeal No. 14A-UI-13361-DT. The claimant participated in the hearing. Donna Wellwood appeared on the employer's behalf. On February 17 the employer presented testimony from one additional witness, Roberta Opperman. During the hearing, Claimant's Exhibit A and Exhibit A-1 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.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

OUTCOME:

Reversed. Benefits allowed if otherwise eligible.

FINDINGS OF FACT:

The claimant started working for the employer on March 5, 2012. She worked full time as a registered nurse in the behavioral health unit of the employer's hospital. Her last day of work was November 16, 2014; although she was paid for work through November 25, 2015.

The claimant had been off work on a leave of absence for a personal medical issue relating to mental health. However, she had been released by her doctor as able to return to work, and did return to work on November 14, November 15, and November 16. She was scheduled to work

on November 18, November 20, November 21, and November 25, but on November 18 she was told that she was not to return to work that day or until further notice as there was an investigation underway.

On November 25 she was contacted and instructed to report for a meeting with Wellwood, the human resources director, on November 26. She did so, but when she appeared for the meeting she was presented with a "Return to Work Agreement." (Claimant's Exhibit A.) The employer had conducted an investigation into allegations made by some of the claimant's coworkers that they felt the claimant was bullying them, that the claimant had left a coworker alone on the unit, and that she was making comments that made them feel unsafe, such as that she felt she was "being stalked," and that she might be "filing a restraining order." The employer did not inquire of the claimant about these allegations, but accepted them as true. As a result, in the agreement the employer sought "certain assurances upon your return to work" that for a period of two years the claimant must agree to items including "to maintain contact with her current mental health providers," "stop referencing things like 'being stalked' and 'filing a restraining order,'" and would "not engage in behavior that could be perceived as bullying."

The claimant felt that this agreement was based upon falsehoods and was discriminatory against her for her prior health issues, and refused to sign the agreement. The employer advised the claimant that she would not be allowed to return to work until or unless she did sign the agreement. The claimant then left without signing.

On November 26 the employer reiterated to the claimant that she could not return to work until or unless she signed the agreement. As a result, the claimant did not return to work on her scheduled days of work beginning November 26 and days thereafter, as she concluded that she had been discharged when she was taken off work and told she could not return until or unless she signed the agreement. The employer considered the claimant to have voluntarily quit by job abandonment when she did not sign the agreement and return to work.

REASONING AND CONCLUSIONS OF LAW:

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. Rule 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). The employer asserted that the claimant was not discharged but that she voluntarily quit by declining to sign the agreement and return to work. Here, it was the employer who initiated the action by taking the claimant off work and requiring that she sign off on the agreement before she would be allowed to return to work. The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code §96.6-2. As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance. Rule 871 IAC 24.26(21).

The issue in this case is then whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). 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).

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. Rule 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. Rule 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason the employer effectively discharged the claimant was that it believed the claimant had behaved inappropriately since returning from her leave of absence and that she was refusing to sign off on certain requirements based upon those allegations; those requirements included a condition that she maintain continued contact with her medical providers, an issue normally of personal choice and right. The claimant denied that the allegations as reported to the employer were true. The employer relies exclusively on the at least second-hand account from the coworkers; however, without that information being provided first-hand, the administrative law judge is unable to ascertain whether those coworkers might have been mistaken, what the context of the reports might have been, or whether the employer's witness might have misinterpreted or misunderstood aspects of their reports. Under these conditions the administrative law judge cannot conclude the claimant either behaved in appropriately after her return to work or that her refusal to sign the agreement was in itself misconduct. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute and the claimant is not disqualified from benefits.

DECISION:

The representative's January 4, 2015 (reference 03) decision is reversed. The claimant did not voluntarily quit and the employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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