IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ANNA M BROUGHTON
Claimant

FAMILY DOLLAR STORES OF IOWA INC
Employer

APPEAL NO. 13A-UI-09760-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/28/13
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Anna Broughton (claimant) appealed a representative's August 16, 2013, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Family Dollar Stores of Iowa (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 27, 2013. The claimant participated personally. The employer participated by Becky Robinson, Store Manager. The claimant offered and Exhibit A 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 July 12, 2012, as a part-time cashier. The claimant signed for receipt of the employer's handbook. On July 18, 2013, the employer posted the schedule for the coming week. Late on July 19, 2013, the store manager found a note from the claimant stating she needed to have July 21, 2013, off to visit her daughter in the hospital. The note was not in the usual place by the register or written on the calendar. The claimant had not called the store manager prior to the completion of the schedule for the week.

On July 20, 2013, the claimant went into the store and saw she was on the schedule for July 21, 2013. The claimant told the store manager she could not work that day because she planned to visit the hospital. The claimant did not mention that she did not work on July 22, 2013, and could have visited the hospital on that day. The store manager asked the claimant what she wanted to do about the problem. The claimant walked out without answering. The store manager assumed the claimant would appear for work. The claimant prepared an e-mail for the district manager outlining the problem and thought she sent in on July 20, 2013, but it was never received by the district manager. The claimant expressed her intent not to appear for work on

July 21, 2013. The claimant did not appear for work on July 21, 2013. The employer assumed she quit work.

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 section 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 voluntarily leave work. The was evidenced by the claimant's e-mail to the district manager. While it did not reach the district manager, it is still evidence of the claimant's state of mind. 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 section 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.

871 IAC 24.32(7) provides:

> (7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. In this case the employer proved one incident of absenteeism. That one incident cannot be considered excessive. Benefits are allowed.

DECISION:

The representative's August 16, 2013, decision (reference 01) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs