IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MICHELLE A CARLSON
Claimant

DAVENPORT COMMUNITY SCHOOL DISTRICT
Employer

APPEAL NO. 11A-UI-11393-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/24/11
Claimant: Appellant (2)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Michelle Carlson (claimant) appealed a representative's August 19, 2011 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Davenport Community School District (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 19, 2011. The claimant participated personally. The employer participated by Audrey Strothkamp, associate director of human resources. 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 having considered all of the evidence in the record, finds that: The claimant was hired on October 7, 2008, as a full-time administrative assistant. The claimant signed for receipt of the employer's handbook on October 3, 2008. The employer did not issue the claimant any warnings during her employment and she received the highest marks on her June 23, 2011, evaluation.

The claimant was meticulous about her work performance and recording her time, because she felt her supervisor was capricious. The claimant observed the supervisor systematically terminate her co-workers. In July 2011, the claimant felt the supervisor was unhappy with her for her absences due to illness. The claimant always completed her leave forms and sent them to the supervisor for approval before entering them on the computer.

On July 28, 2011, the employer told the claimant that on July 25, 2011, it discovered that the claimant took 123.5 hours of leave between July 1, 2010, and July 1, 2011, without recording the time. The claimant knew this to be untrue. Many people had access to the computer records. The employer told the claimant she could resign or be terminated. The claimant submitted her resignation.

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.

871 IAC 24.26(21) provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> (21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

If an employee is given the choice between resigning or being discharged, the separation is not voluntary. The claimant had to choose between resigning or being fired. 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 the claimant was not discharged for misconduct.

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(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.

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). If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). The employer had the power to present testimony but chose not to do so. The employer did not provide firsthand testimony at the hearing and, therefore, did not provide sufficient eyewitness evidence of job-related misconduct to rebut the claimant's denial of said conduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's August 19, 2011 decision (reference 01) is reversed. The employer has not met burden of 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/kjw