IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

TABETHA J HEASLEY
Claimant

GMAC MORTGAGE CORP OF PA
Employer

APPEAL NO. 08A-UI-05788-LT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/04/08 R: 03
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Leaving
Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 18, 2008, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on July 9, 2008. Claimant participated. Employer participated through Leslie Schaffer and Gina Muniz. Subpoenaed witnesses David Cannell, Sharon Thorp, and Debbie Wilson participated. Employer was represented by Franky Patterson of Barnett Associates Inc.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer or if she was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time customer care representative from April 9, 2007 until May 5, 2008, when she was discharged for having allegedly failed to notify her supervisor of her departure from her workstation. Rule 12 in the policy handbook prohibits an unapproved absence from the workstation during the workday. Her immediate supervisor, David Cannell, was not present, as were the next two levels of supervisors. May 2 was a payday and claimant spoke with acting supervisor Sharon Thorp about her concern that she was not paid for the second pay period after her transition from full-time to part-time. She had not been paid on April 4, was paid less than $3.00 on April 18 and was to be paid for 19 fewer hours than expected on May 2. (Claimant and employer still have not resolved the pay issue.) She told Thorp if she could not get the pay issue resolved over the phone, she would have "big problems" since she is paid by direct deposit. She told Thorp she may have to leave to put money into her account before her rent check was presented to the bank that day. Thorp gave her the phone number for the human resources department out-of-state and she spent several minutes on the phone in the conference room with them unsuccessfully attempting to resolve the payroll matter. While Thorp asked claimant to let her know what happened, she did not specifically deny claimant permission to leave, tell her she must return to ask permission before

leaving, or tell her when she expected the follow-up communication. Claimant spent a short period of additional time at her desk in full view of Thorp and sent an e-mail to Cannell but forgot to copy the scheduling department. She did not speak with Thorp again because she believed Thorp understood the plan of action. Claimant gathered her belongings and left to go to another bank to withdraw money and borrow money from her father before going to the bank where her rent check was to be presented. She completed these errands about an hour before her shift ended but did not call to report in, as she had not been expected to do so in the past.

Claimant called the scheduling department on May 5 and properly reported her absence due to a recurrent injury that occasionally leaves her unable to walk. On May 6, prior to her shift, she received a letter from employer (sent at 4:30 p.m. on May 5 via Federal Express) indicating she was considered to have quit her employment for having left work on May 2. There had been no prior reprimands for leaving without permission or proper notice.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for no disqualifying reason.

Iowa Code § 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.

Iowa Code § 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.

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).

Claimant reasonably attempted to resolve her concerns about the delayed and shortage of pay with employer and told the acting supervisor, with a reasonable degree of clarity, that she would have to leave to make arrangements with the bank to avoid the rent check being dishonored. Because she called to report a medical absence on May 5 and intended to report to work as scheduled on May 6 but had received notice of her termination before her shift on May 6, the separation was a discharge and not a voluntary leaving of employment. Since claimant established her intention to continue working, the burden then falls to employer.

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). The issue is not whether the employer made a correct decision in separating claimant, 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 misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. The primary conflict is related to miscommunication between Thorp and claimant. Since Thorp did not specifically tell claimant to speak with her again before leaving and claimant had never been disciplined or counseled about leaving without appropriate notice or authorization, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Benefits are allowed.

DECISION:

The June 18, 2008, reference 01, decision is reversed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The benefits withheld effective the week ending June 21, 2008 shall be paid to claimant forthwith.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw