IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JANE A FRANCOIS
Claimant

MT PLEASANT HOME
Employer

APPEAL NO. 12A-UI-10183-NT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/22/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Mount Pleasant Home filed a timely appeal from a representative's decision dated August 20, 2012, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was held on September 18, 2012. The claimant participated personally. The employer participated by Mr. Keith Kettler, administrator, and Ms. Kelly Kettler, associate administrator.

ISSUE:

At issue is whether the evidence in the record establishes intentional misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Jane Francois was employed by Mount Pleasant Home from August 2011 until April 26, 2012, when she was discharged by the employer. Ms. Francois worked as a part-time kitchen assistant and was paid by the hour. The claimant's immediate supervisor was Keith Kettler, administrator.

Ms. Francois was discharged by the facility's administrator, Keith Kettler, on April 26, 2012, when Mr. Kettler believed that the claimant had taken time off work without his specific permission on April 26, 2012, and that her absence that day was unnecessary. The home's administrator considered the claimant's absence that day to be a "no-call, no-show," because permission to be absent had been given by the home's assistant administrator, Kelly Kettler. The claimant had requested April 26 off to travel to pick up her son, or a friend of her son, who had unexpectedly ended a river trip in southern Illinois. The claimant's request for time off had been authorized by Ms. Kettler and a replacement had been secured. Although plans changed and the claimant later did not need to take April 26 off, she did not report for work because her replacement had been secured. Ms. Francois then requested to have April 30 and May 1 off for the same reason as her request to be off on April 26. On April 26, the claimant encountered Mr. Kettler at a garage sale outside of the facility and found no reason to mention her request to be off that day. When Mr. Kettler determined that the claimant had requested to be off and had received permission from someone in management besides himself, Mr. Kettler considered the

claimant's failure to report to be another example of failure to report or provide notification of her impending absence.

Because the claimant had two previous incidents of what the employer considered to be no-call, no-show, a decision was made to terminate Ms. Francois from her employment. In March 2012, the claimant had verbally requested permission to be absent for one day to attend a funeral. Although the claimant believed that the verbal authorization to be absent was sufficient, the home administrator later considered it to be a no-call, no-show because the claimant had not made a written request to be off work. On April 18, the claimant had been absent because she was required to go out of town on short notice to retrieve her daughter who had car trouble. Because of cell phone access issues, the claimant did not call the employer. The claimant, however, called upon her return.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. It does 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(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 this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. Conduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

In this matter, the employer made a management decision to terminate Ms. Francois because the employer felt that she was not dependable as a part-time worker and because the employer believed that the claimant had accumulated three instances of "no-call, no-show" while employed by Mount Pleasant Home. The evidence in the record establishes that Ms. Francois did indeed have one occurrence of no-call, no-show when she left to retrieve her daughter who had had car trouble and had not notified the employer in advance that she would not be reporting for scheduled work. On another occasion, it appears the claimant had received verbal authorization from the home's administrator to be absent for one day to attend a funeral, but the employer considered the absence to be unexcused because the claimant had not made a prior written request to be off work.

The final incident that caused the claimant's discharge took place when Ms. Francois believed it was necessary to be off work to travel and assist her son or his associate who had unexpectedly ended a river trip early in southern Illinois. The claimant secured permission from the facility's associate administrator and a replacement worker had been secured to replace the claimant on April 26, 2012. Because a replacement had been secured, the claimant did not report for work that day. Because the claimant had secured permission from another management individual and a replacement had been secured, the claimant did not bring the matter up to Mr. Kettler when she encountered him at a garage sale that morning.

Because of what the administrator had considered to be two previous instances of no-call, no-show and because of the final incident, a management decision was made to terminate Ms. Francois from her employment.

The question before the administrative law judge is not whether the employer has a right to discharge an employee for these reasons, but whether the discharge is disqualifying under the provisions of the Employment Security Law. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, the evidence in the record does not establish sufficient intentional misconduct to warrant the denial of unemployment insurance benefits. The claimant was reasonable in her belief that she had authorization to be off on April 26, 2012, and, because a replacement had been secured, she did not report for work nor discuss the matter further with Mr. Kettler. The home's assistant administrator, Kelly Kettler, was apparently cloaked with management authority to make schedule changes, because she did so at the claimant's request and did not indicate to Ms. Francois that any additional authorization was required. Benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated August 20, 2012, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Terence P. Nice
Administrative Law Judge

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Decision Dated and Mailed

kjw/kjw