

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SUSAN E ROELLE**

Claimant

**APPEAL NO: 13A-UI-07201-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE GREEN THUMBERS INC**

Employer

**OC: 05/19/13**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge  
Section 96.5-1 – Voluntary Leaving  
Section 96.7-2-a(2) – Charges Against Employer’s Account

**STATEMENT OF THE CASE:**

The Green Thumbers, Inc. (employer) appealed a representative’s June 10, 2013 decision (reference 01) that concluded Susan E. Roelle (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties’ last-known addresses of record, a telephone hearing was held on September 6, 2013. The claimant participated in the hearing. Stephanie Rogers appeared on the employer’s behalf. 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.

**ISSUES:**

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? Is the employer’s account subject to charge?

**OUTCOME:**

Affirmed. Benefits allowed. Employer’s account not subject to charge in current benefit year.

**FINDINGS OF FACT:**

The claimant started working for the employer on February 4, 2013. She worked full time as a garden center clerk. Her last day of work was May 3, 2013.

Through Friday, May 3, 2013 the claimant had only been scheduled to work Monday through Friday, although she had been advised when she was hired that she might be called upon to work some weekends. The claimant worked a shift on May 3 that ended at about 5:00 p.m. After she finished her shift and went home, at about 7:30 p.m. she got a call from a coworker advising her that the employer had just posted the schedule for Sunday, May 5, which had the claimant scheduled to work from 8:30 a.m. to 5:00 p.m. At about 9:00 a.m. on May 4 the claimant called the employer’s owner and told him that she could not work the shift on May 5.

She was getting married on May 18, and she had a dress fitting and a bridal shower scheduled for May 5. The owner told her that "I need you when I need you, or you can't work here," and hung up.

The claimant did not report for the shift on May 5, believing that she had already reported to the employer that she would not be there. The employer considered her a no-call/no-show, and further considered her to have voluntarily quit because of the no-call/no-show. When the claimant reported in for work on May 6, she was told that her employment was ended due to her failure to report for the shift on May 5.

The claimant established an unemployment insurance benefit year effective May 19, 2013.

### **REASONING AND CONCLUSIONS OF LAW:**

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 failing to report for her shift on May 5. 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. 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. 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. 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. 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 her failure to report for her shift as directed on May 5. The question of whether the refusal to work a specific shift constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request to the employee to work the shift in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa App. 1985); *Boyd v. Iowa Department of Job Service*, 377 N.W.2d 1 (Iowa App. 1985); *Pierce v. Iowa Department of Job Service*, 425 N.W.2d 679 (Iowa App. 1988). Here, the claimant was not even informed of the employer's desire for her to work the Sunday shift until after she had gone home after her last shift for the week on Friday evening. She had a reasonable excuse for not being able to work on the Sunday, particularly with such short notice, and she did inform the employer about 24 hours in advance that she would be unable to work the shift.. 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.

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code § 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code § 96.19-3. The claimant's base period began January 1, 2012 and ended December 31, 2012. The employer did not employ the claimant during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

**DECISION:**

The representative's June 10, 2013 decision (reference 01) is affirmed. 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. The employer's account is not subject to charge in the current benefit year.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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