

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JENNIFER M LANGE**  
Claimant

**APPEAL NO. 13A-UI-02983-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALLSTEEL INC**  
Employer

**OC: 02/10/13**  
**Claimant: Appellant (5)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated March 7, 2013, reference 01, that concluded she had voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on April 11, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. John O’Fallon participated in the hearing on behalf of the employer with witnesses, Jason Mucciarone and Darcy Krishnan.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked for the employer as a work cell operator from July 17, 2006, to February 7, 2013. She was informed and understood that under the employer's work rules, employees were not allowed to leave work before the end of their shift without notifying a supervisor and could not receive Family and Medical Leave Act (FMLA) leave without approval.

The claimant and a coworker, Stephanie McKillips, had repeated disagreements at work. The claimant had complained repeatedly to management that McKillips was not doing her share of the work and McKillips complained that the claimant was mean to her. The employer had followed its procedure for resolving disputes between employees. First, she and McKillips met with their supervisor, Darcy Krishnan. Second, when problems continued, they met with Krishnan and the plant manager, Kevin Young.

On February 7, 2013, the claimant was scheduled to work from 6 a.m. to 3:30 p.m. That morning, the claimant and McKillips again clashed while working together. McKillips asked the claimant why she was “such a rag.” Later, when McKillips saw the claimant, the claimant was swinging the cord of her radio and commented, “I’m a rag. I’m such a rag.”

After McKillips complained to her supervisor about what the claimant did, a third meeting was set up, this time with the human resources representative, Jason Mucciarone, Krishnan, and

Young. In questioning the women, Mucciarone learned about the conduct that had happened that day. He told the claimant that she had committed a safety violation by swinging the cord. The claimant became upset by what she considered intimidating conduct by Mucciarone. So, she said that she was not going to listen to their lies anymore and stood up and went to the door. Mucciarone told the claimant to take her hand off the door and sit down because the meeting was not over. Mucciarone told her that if she did not stay, she would be written up for insubordination. The claimant then said "fine, write me up, you always take her side anyway." She then left the room, went and got her radio and purse, and left the building to go home. She left work at about 10:30 p.m. without notice to or approval from a supervisor. She did not leave with the intention of quitting.

Later, Krishnan and Young went out to the claimant's work area. They discovered she had left the building. At 1:15 p.m., Mucciarone called the claimant and left a voice mail. In the voice mail, he said she needed to call him back because she had left work unauthorized. He said if she did not return his call, it would be considered job abandonment.

The claimant received the voice mail but did not return the call. She realized that her job was in jeopardy. She was authorized for intermittent Family and Medical Act leave. She called after 9 p.m. on February 8 and left a message saying she was taking FMLA on February 8.

When Mucciarone had not heard from the claimant by the afternoon of February 8, 2013, he called and left a message for her stating that since she had not contacted him, she was considered to have abandoned her job and was terminated. The claimant did not contact the employer again.

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

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992).

While this presents a close question, I conclude that when the claimant left the building on February 7, she did not intend to permanently sever her employment. As a result, the separation will be treated as a discharge.

The next issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

Both McKillips and the claimant's actions on February 7 warranted disciplinary action. The claimant's reaction when questioned about her wrongful behavior was insubordinate. She then left work long before the end of her shift without notice or permission in willful violation of a company rules. I believe that claimant received Mucciarone's voice mail and tried to get around talking to him about leaving work without authorization by leaving a message during off hours stating she was taking FMLA. This course of conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

If the claimant's separation was treated as a voluntary quit, it would be likewise be disqualifying because the evidence establishes the employer was justified in questioning her about her conduct that day and no good cause attributable to the employer has been proven here.

**DECISION:**

The unemployment insurance decision dated March 7, 2013, reference 01, is modified with no change in the outcome. The claimant was discharged for work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs