

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NATASHA D CANADA**  
Claimant

**APPEAL NO. 11A-UI-10708-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TM1 STOP LLC**  
Employer

**OC: 07/17/11  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 8, 2011 (reference 01) decision that allowed benefits for the notice period through April 9, 2011 but denied benefits thereafter. After due notice was issued, a hearing was held by telephone conference call on September 7, 2011. Claimant participated. Employer did not respond to the hearing notice instructions and did not participate.

**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 reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an account manager and was separated from employment on March 28, 2011. She had put in her notice to resign on April 11, 2011 because she thought she had found another, better paying job with an out-of-state janitorial firm for local building cleaning. They did not discuss a start date, rate of pay, or hours but the prospective employer told her to give him a call back after she put in her notice with TM1 Stop. After she did, she did not get a phone call back. She attempted to get her old job back and was unable to get a return call from Dennis or Leann.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer, but was discharged for no disqualifying reason prior to the intended resignation date.

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.

871 IAC 24.25(3), (38) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(3) The claimant left to seek other employment but did not secure employment.

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

Claimant's decision to quit because she was looking for other employment, but did not have a firm offer from the janitorial company, was not a good cause reason attributable to the employer. Because the discharge was in response to a resignation notice no misconduct is established and since the employer terminated the employment relationship in advance of the resignation notice effective date, the claimant is entitled to benefits from the date of termination until the effective date of the proposed resignation.

**DECISION:**

The August 8, 2011 (reference 01) decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer, but was discharged prior to the resignation effective date. Benefits are allowed until April 9, 2011. Thereafter, benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times her weekly benefit amount.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs