

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MONICA R BRIDE
Claimant

APPEAL NO. 07A-UI-05798-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 05/13/07 R: 03
Claimant: Appellant (2)

Section 96.5-1 - Voluntary Quit
Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Monica Bride (claimant) appealed a representative's May 31, 2007 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she had voluntarily quit employment with Care Initiatives (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 27, 2007. The claimant participated personally. The employer was represented by Lynn Corbeil, Attorney at Law, and participated by Kari Gerst, Provisional Administrator. The claimant offered one exhibit which was marked for identification as Exhibit One. Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 6, 2005, as a full-time certified nursing assistant. The claimant scheduled time off on May 15 and 16, 2007, for medical appointments in another city. She had to use vacation rather than sick leave because she had not worked for the employer long enough to have sick leave. The claimant informed the assistant director of nursing, who prepared the schedule, and the assistant director of nursing granted the claimant's request for time off.

The claimant accepted a job at Cargill Meat Solutions and wanted to work as needed for the employer. She tendered her resignation as a full-time worker to the employer on or about May 13, 2007. She informed the employer that her last day as a full-time worker would be May 27, 2007.

The assistant director of nursing decided that the claimant could not take any vacation after she gave her two-weeks notice and put the claimant on the schedule for May 15 and 16, 2007. The

claimant was unaware of the assistant's actions. When the claimant did not appear for work on May 15, 2007, the assistant telephoned the claimant. After some discussion the assistant terminated the claimant for failure to appear for work without notice on May 15, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer. Prior to her last day of work the employer discharged the claimant but has not proven misconduct.

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.

871 IAC 24.25(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 section 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 section 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:

(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.

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 employer has not met its burden of proof to show job related misconduct. The claimant was terminated after giving notice of her resignation. The claimant is eligible to receive benefits until the date of her resignation, May 27, 2007.

Iowa Code section 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 section 96.5-1-a 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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant left her position with the employer to work for another employer. When an employee quits work to take other employment, she is not disqualified from receiving unemployment insurance benefits. The claimant quit work to take other employment. She voluntarily quit without good cause attributable to the employer. Benefits are allowed because the claimant left to take other employment. The employer will not be charged.

DECISION:

The representative's May 31, 2007 decision (reference 01) is reversed. The claimant is qualified to receive benefits, provided she is otherwise eligible until May 27, 2007, because the employer discharged the claimant but has not proven misconduct. On May 27, 2007, the

claimant planned to voluntarily leave work without good cause attributable to the employer. The claimant is not disqualified from receiving unemployment insurance benefits because she quit to take other employment. The employer will not be charged.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs