

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARBARA J MUNN
Claimant

APPEAL NO. 12A-UI-12348-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABCM CORPORATION
Employer

OC: 09/09/12
Claimant: Appellant (2-R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 5, 2012, reference 01, that concluded the claimant was suspended for violation of a company rule. A telephone hearing was held on November 5, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Craig Allen participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked for the employer as a certified nursing assistant from June 2011 to September 5, 2012. The employer is a nursing home facility.

The claimant developed a severe case of head lice from her children, who got it from school. She knew that she would not be able to work until she completely rid of the head lice. She called and informed the administrator on September 6 that she had head lice and was unable to work. The administrator told the claimant that he would tell the director of nursing about her condition and would take her off the schedule until she was cleared to return to work. The claimant could not work with residents until the head lice were gone.

The claimant treated herself for head lice and stopped in periodically at the facility to be examined by a nurse. Each time, the claimant still had symptoms of head lice and was unable to work.

The claimant filed a new claim for unemployment insurance benefits effective September 9, 2012.

The claimant ended up quitting her employment and taking another job at K-Mart in early October 2012. She is filing for benefits for the period of time that she was unable to work due to the head lice condition, before she resigned from her job.

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).

The Agency's decision that the claimant was on a disciplinary suspension for violating company rules is clearly wrong. The claimant was not suspended for any violation of the employer's rules and was never discharged from her job. She had not quit employment until October 2, 2012. She is not subject to a voluntary quit or discharge for misconduct disqualification.

The real issue in this case is whether the claimant was able to and available for work during the time period she was filing claims for benefits. This issue has not been decided by the Department and was not an issue listed on the hearing notice to be considered or decided in this case. As a result, it is necessary to remand this case to the Unemployment Insurance Division to decide if the claimant was able to and available for work.

DECISION:

The unemployment insurance decision dated October 5, 2012, reference 01, is reversed. The claimant is not subject to disqualification for being suspended or discharged for misconduct or for quitting employment as of September 9, 2012. It is necessary to remand this case to the Unemployment Insurance Division to decide if the claimant was able to and available for work.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw