

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEATHER N DEGREIF
Claimant

APPEAL NO. 11A-UI-15914-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**GOVERNMENT EMPLOYEES
INSURANCE COMPANY**
Employer

OC: 05/22/11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Quit
871 IAC 24.26(21) – Resigning in Lieu of Discharge
Section 96.6-2 – Timely Appeal

STATEMENT OF THE CASE:

Government Employees Insurance Company (GEICO) filed an appeal from an unemployment insurance decision dated June 13, 2011, reference 01, that allowed benefits to Heather N. DeGreif. After due notice was issued, a telephone hearing was held January 18, 2012, with Ms. DeGrief participating. Jackie Nolan of Employers Unity represented the employer at the hearing. Human Resources Supervisor Andrew Vaughn testified. Exhibit D-1, the appeal letter and supporting documents, were admitted into evidence.

ISSUES:

Can the appeal be accepted as timely?

Was the separation a disqualifying event?

FINDINGS OF FACT:

Heather N. DeGreif was employed as a service representative by GEICO from September 29, 2010, until May 19, 2011. Ms. DeGreif's attendance did not meet company standards. A few days before May 19, 2011, Ms. DeGreif was told that she would be discharged if she missed any further work for any reason. On May 19, 2011, Ms. DeGreif's young daughter became ill at school. No one besides Ms. DeGreif was available to pick her up. Ms. DeGreif was unable to contact her supervisor, Lisa Burrish, by telephone. She sent her a text message that included words to the effect that she knew that she would be discharged. The supervisor's response said that the matter was beyond her control and that she should contact Human Resources Supervisor Andrew Vaughn. When she spoke to Mr. Vaughn by telephone, she resigned, believing that she would be discharged if she did not resign.

The fact-finding decision in the present matter was issued on June 13, 2011. It was sent to GEICO in care of a former representative. Employers Unity, its current representative, had

notified the Agency months earlier of the change. It had provided a new address for the Agency to use. The Agency had not updated its records. Employers Unity filed the present appeal on behalf of GEICO within a few days of learning of the existence of the June 13 decision.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6-2 gives parties ten days from the date of a fact-finding decision to file an appeal. Additional time for an appeal may be granted, however, if the delay is the fault of the Agency. See 871 IAC 24.35. The evidence in this record falls within the circumstances contemplated by the rule. The present representative had done all in its power to make certain that the Agency sent the fact-finding decision to the correct address. The appeal is accepted as timely. The remaining question is whether the separation from employment was a disqualifying event.

The employer views the separation as a voluntary quit. Ms. DeGreif views it as a discharge. There is evidence in the record supporting each view. The administrative law judge finds the claimant's testimony that she had been told that any future absences would lead to discharge is credible. One who resigns in lieu of certain discharge does not leave work voluntarily, according to 871 IAC 24.26(21). The administrative law judge analyzes the evidence as if it had been a discharge.

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.

The employer has the burden of proof. See Iowa Code section 96.6-2. Although excessive unexcused absenteeism is misconduct, absences due to matters beyond an individual's control, such as illness, are not automatically unexcused. The question is whether the employee properly reports the absence to the employer. See 871 IAC 24.32(7).

The evidence establishes that Ms. DeGrief was confronted with an emergency situation on May 19 and was the only one available to respond to her child's sudden illness. She gave the employer as much notice as was possible under the circumstances. The absence cannot be considered to be unexcused for unemployment insurance purposes.

No disqualification may be imposed following a discharge if the final incident leading directly to that discharge was not a current act of misconduct. See 871 IAC 24.32(8). No disqualification may be imposed in the present case, because the final incident leading to the separation cannot be considered to be an act of misconduct.

DECISION:

The unemployment insurance decision dated June 13, 2011, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw