

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JODI K VAN HOUSEN
Claimant

APPEAL NO. 10A-UI-06561-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PER MAR SECURITY & RESEARCH CORP
Employer

OC: 09/06/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 21, 2010, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on June 23, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Amy Goodwin participated in the hearing on behalf of the employer with a witness, Jodie Mortensen. Exhibits 1 through 3H were admitted into evidence at the hearing. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show the claimant was disqualified from March 7 to 20 because she was under a doctor's care and not released to work in a decision dated April 21, 2010, reference 03, that was not appealed. If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked a sales consultant for the employer from November 2, 2009, through January 16, 2010.

The claimant stopped working after January 16, 2010, because she recognized that she had an addiction disorder and sought treatment for the condition. She notified the employer about her health issue and desire to arrange for treatment for that condition.

The claimant was granted a leave of absence through March 10, 2010. She was informed and understood that in order to return to work she would need a release to return to work from her healthcare provider without restrictions and failure to return to work after her leave expired could be considered a voluntary resignation.

The claimant attended and was released from an inpatient treatment facility. Before she was released, she scheduled an appointment with a healthcare provider for March 10. She

discovered that her regular provider, nurse practitioner Kathy Fitzgerald, was not available until March 15 so she scheduled the appointment with Dr. Ketchem for March 10. The claimant was informed on March 9 that Dr. Ketchem did not feel comfortable seeing the claimant because he was unfamiliar with her case.

The claimant contacted the employer and requested an extension of her leave until she could see Fitzgerald the next week. The claimant was informed that the additional extension could not be granted, and if she did not return to work with a doctor's release on March 11, 2010, her employment was terminated. The claimant could not get an earlier appointment. She did not return to work or have further contact with the employer because she understood she had been discharged.

On March 15, 2010, the employer sent the claimant a letter informing her that her employment was being voluntarily terminated due to her being unable to return to work at the expiration of her leave.

The claimant had filed for unemployment benefits in September 2009. She filed an additional claim on March 13, 2010. The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

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 I recognize that there is a rule that provides that a person is considered to have voluntarily quit if she does not return to work at the end of a leave of absence. 871 IAC 24.22(2)j(2). In this case, the claimant had taken reasonable steps to get the release necessary to return to work but was not granted a few more days to see her health provider. She did not quit, her employment was terminated because the employer decided she had been given enough time to get her release.

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). No willful and substantial misconduct has been proven in this case or negligence of degree of recurrence equal to willful misconduct in culpability.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. If the employer becomes a base period employer in a

future benefit year, its account may be chargeable for benefits paid to the claimant based on this separation from employment.

The claimant remains ineligible for unemployment insurance benefits through March 20 based on the decision issued on April 21, 2010, reference 03, that was not appealed by the claimant.

DECISION:

The unemployment insurance decision dated April 21, 2010, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits based on the reasons for her separation from employment, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css