

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

LYNN R BRYANT
PO BOX 571
COLONA IL 61241

COMBINED HEALTH SERVICES PC
3401 – 16TH ST
MOLINE IL 61265

Appeal Number: 04A-UI-06668-DT
OC: 05/23/04 R: 12
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Combined Health Services, P.C. (employer) appealed a representative's June 7, 2004 decision (reference 01) that concluded Lynn R. Bryant (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 16, 2004. The claimant participated in the hearing. Michael Hurst appeared on the employer's behalf and presented testimony from one other witness, Clara (Isabelle) Hurst. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE: Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

After a prior period of employment with the employer, the claimant most recently started working for the employer on September 5, 1991. She worked full time as a secretary and billing clerk in the Davenport, Iowa, office of the employer's chiropractic practice. Her last day of work was May 5, 2004.

Customarily, the claimant was off work on Tuesday afternoons. Normally, on Tuesdays another employee came to the Davenport office from the Moline office to cover the claimant's duties. In approximately April 2004, there was a staff position that was vacant, and with other staff vacations, the employer had scheduled the claimant to work on some Tuesday afternoons, which she had done. The employer was aware that the claimant was also exploring other employment options.

On or about April 26, the claimant became aware that Ms. Hurst, the office manager, had scheduled her to work the afternoon of Tuesday, May 4. On April 29 the claimant attempted to contact Ms. Hurst, who was out of town, so she spoke to Dr. Hurst and told him that it was "not going to work" for her to work on that Tuesday afternoon. The claimant had planned on pursuing some other employment possibilities on that date. Dr. Hurst contacted Ms. Hurst, who then called the claimant, who repeated what she had told Dr. Hurst. Ms. Hurst told the claimant that she had better be at work Tuesday afternoon or she had better find another job.

The claimant normally would get off at noon on Tuesdays, and she had scheduled the meeting regarding her job search for shortly thereafter. She determined that she could be done with her meeting at approximately 1:15 p.m. and that she could then return to the employer's office. She contacted the employee who normally covered the Davenport office on Tuesday afternoons to see if she could cover the office just until she returned. That employee had not been informed that she was not to go to the Davenport office that Tuesday afternoon, and informed the claimant that she was planning on being there as usual all afternoon, so the claimant should not worry about returning. The claimant did not verify with Ms. Hurst when she returned to work Tuesday morning that this arrangement would be agreeable, and proceeded to leave the office at noon on Tuesday, and the other employee worked the full afternoon Tuesday.

On May 5, 2004, Ms. Hurst confronted the claimant and instructed the claimant to turn over her keys, indicating that the claimant should leave. The claimant responded that she was going to quit anyway and that May 6 would have been her last day; this statement was untrue, made in an attempt to "save face."

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant voluntarily quit.

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.

871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The employer asserted that the claimant quit by not reporting for work Tuesday afternoon as instructed and by stating that she was going to quit anyway. The claimant believed that the Tuesday afternoon shift had been covered and did not fail to work that afternoon because she intended to quit. Her statement regarding her supposed plan to have Thursday be her last day anyway was made after the discharge; after a discharge has been effected, there is no position that can then be quit. The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code Section 96.6-2. As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance. 871 IAC 24.26(21).

The issue in this case is then whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code Section 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

The focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer's interest, or
 2. The employee's duties and obligations to the employer.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The reason the employer effectively discharged the claimant was the belief that she had abandoned her job by not working on the Tuesday afternoon as previously directed. The claimant believed the Tuesday afternoon matter had been covered. While she failed to get proper clearance of the arrangement from the employer, this was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's June 7, 2004 decision (reference 01) is affirmed. The claimant did not voluntarily quit and the employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

ld/tjc