

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA SMITH

Claimant

APPEAL NO. 10A-UI-16462-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

METABOLIC RESEARCH CENTER

Employer

OC: 11/08/09

Claimant: Appellant (1/R)

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.5-2-a - Discharge for Misconduct

STATEMENT OF THE CASE:

Melissa Smith (claimant) appealed an unemployment insurance decision dated June 16, 2010, reference 02, which held that she was eligible for unemployment insurance benefits from the date of her termination to the effective date of her resignation with Metabolic Research Center (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 27, 2010. The claimant participated in the hearing. The employer did not comply with the hearing notice instructions and did not call in to provide a telephone number at which a representative could be contacted and, therefore, did not participate. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant was discharged for work-related misconduct prior to the effective date of her resignation, and whether her voluntary separation from employment qualifies her to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: It should be noted that the claimant did submit a timely appeal. The disqualification decision was issued on June 16, 2010 and it became final unless an appeal was received by June 26, 2010. The claimant submitted her appeal to a local office on June 25, 2010, but the appeal was misfiled.

The claimant was employed as a full-time consultant from approximately January 5, 2010 through May 26, 2010. She gave a two-week notice on May 25, 2010 and was discharged on the following day. The employer told the fact-finder in the fact-finding interview that the claimant was discharged for theft of product.

The claimant quit her employment because she was not satisfied with the work environment. She was told at the time of hire that she would only work one Saturday per month, but she began working almost every Saturday at the beginning of her employment and after her training. The claimant testified that she would only have to work late on one evening per week, but she worked late several

evenings per week. This also changed shortly after she was hired, but she continued working for another four months.

There was a high employment turnover and the claimant was upset about that. She said that her manager created a hostile work environment due to her attitude and because she was blunt, "almost to the point of being rude." However, the claimant testified that she expected she and the manager would continue to be friends after her separation.

The claimant had an open unemployment insurance claim at the time she was hired. She continued to file for weekly benefits for the next three weeks while reporting no wages.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer or if the employer discharged her for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

The claimant submitted her resignation on May 25, 2010, with an effective date of June 8, 2010. She quit because she did not like the work environment; the claimant worked more hours than she was led to believe from the beginning of her employment. The court held that a claimant's resignation seven months after a substantial change in the contract of hire was a disqualifiable event because the claimant was held to have acquiesced in the changes. Olson v. Employment Appeal Board, 460 N.W.2d 865 (Iowa App. 1990). If the claimant were that upset about the extended hours, it seems unlikely that she would have continued to work the schedule she was given.

Another reason for her voluntary separation was due to the manager creating a "hostile work environment." However, the evidence does not support that allegation, particularly when the claimant wanted to be friends with that manager after she was no longer an employee. It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. The claimant has not satisfied that burden.

However, when an individual is discharged prior to an effective date of resignation, benefits are allowed from the last day worked until the effective date of the resignation, unless the claimant was discharged for work-connected misconduct. 871 IAC 24.25(38). The claimant was discharged on May 26, 2010 due to theft.

Iowa Code § 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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant does not rise to the level of job misconduct as that term is defined in the above stated Administrative Rule. The employer failed to meet its burden. Work-connected misconduct has not been established in this case. Benefits are allowed from May 29, 2010 through June 5, 2010 and denied thereafter.

An issue as to whether the claimant reported income from her new employer arose as a result of the hearing. This issue was not included in the notice of hearing for this case, and the case will be remanded to Quality Control for an investigation and determination as to whether the claimant had earned but unreported wages. 871 IAC 26.14(5).

DECISION:

The unemployment insurance decision dated June 16, 2010, reference 02, is affirmed. The claimant was discharged prior to the effective date of her resignation and is allowed benefits for the two-week period ending June 5, 2010. Subsequent to that date, benefits are denied, since she quit her employment without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the earned but unreported wages.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw