

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KARI J GOODWIN
Claimant

APPEAL NO. 13A-UI-10031-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GENTLE DENTAL PC
Employer

OC: 07/28/13
Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated August 26, 2013, reference 01, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on October 1, 2013. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. As shown on the APLT screen (Exhibit 1), there is no telephone number listed for the claimant. This shows she failed to provide a telephone number at which she could be reached for the hearing because this is the log where phone numbers for the parties are entered. Stefanie Breslin participated in the hearing on behalf of the employer with a witness, Marcia Walker.

ISSUE:

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

FINDINGS OF FACT:

The claimant worked full time as an office receptionist for the employer from April 30, 2013, to July 25, 2013. She had been repeatedly counseled by the office manager about rudeness and unprofessional conduct toward patients and coworkers. Her last counseling for this was on July 25.

The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were to speak with a person rather than text or leave a voice mail message.

The claimant was scheduled to work on July 26 and 27. She called and left a voice mail on July 26 stating that she was not going to be at work. She did not report to work or call in on July 27.

The claimant was scheduled to work on July 29. She called and talked to the office manager. She told the office manager that she figured she was not scheduled to work because she was not there on July 27. The office manager told her that they could discuss that when she came in to work. The claimant said she was not going to come in.

No one in management informed the claimant that she was discharged. The employer considered the claimant to have quit when she failed to come in to work on July 29 to talk to the office manager.

The hearing scheduled for 2 p.m. concluded at 2:24 p.m. The claimant called the Appeals Bureau at 2:29 p.m. She admitted she received the hearing notices for the 2 p.m. and 2:05 p.m. hearings. The claimant said she was "pretty sure" she called in after receiving the hearing notice to provide her telephone number. She, however, did not have a control number routinely given to parties who call in for hearings. Furthermore, she did not call in within five minutes after the scheduled time of the hearing to check on its status, which again is routine advice given parties who call in. Finally, the clerks who take calls for hearings were asked to review their call logs to see if the claimant called in. Exhibit 2 shows each reported that she had not taken a call from the claimant. The claimant failed to follow the call-in instructions on the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant has shown good cause to reopen the hearing. 871 IAC 26.14(7) provides:

- b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.
- c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

The preponderance of the evidence shows the claimant did not call and provide her telephone number to the Appeals Bureau for the hearing. Good cause to reopen the hearing has not been established.

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.

The evidence establishes the claimant voluntarily quit when she decided not to return to work on July 29. No one in management told the claimant she was discharged. The office manager told the claimant they would talk about whether she was going to be scheduled when she reported to work. The claimant chose not to come in to work.

Even if the claimant's separation was treated as a discharge, she would be disqualified for misconduct because she had repeated warnings, yet was absent from work on July 26 and 27 without proper notice to the employer as required by the employer's policy. On July 26 she called and left a message, which was not a proper call in. On July 27 she did not call at all. This conduct would amount to a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant.

DECISION:

The unemployment insurance decision dated August 26, 2013, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs