

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GWEN D ROBINSON
Claimant

APPEAL NO. 09A-UI-08672-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

**Original Claim: 09/14/08
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Gwen D. Robinson (claimant) appealed a representative's June 10, 2009 decision (reference 05) that concluded she was not qualified to receive benefits, and the account of Care Initiatives (employer) would not be charged because the claimant voluntarily quit her employment for reasons that do not qualify her to receive benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 2, 2009. The claimant participated in the hearing. Jennifer Coe represented the employer. Angie Campbell and Jack Studer testified on the employer's behalf. 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:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 18, 2009. The employer hired the claimant to work as a full-time nursing assistant.

On May 3, the claimant left Campbell, the director of nursing, notes (messages) on Campbell's desk that her back hurt or she had hurt her back at work. On May 4, 2009, when Campbell talked to the claimant, Campbell told the claimant she would be suspended for three days because she had not filed an incident report on May 3. Campbell made an appointment for the claimant with the employer's workers' compensation doctor on May 4, and told the claimant to come back and talk to Campbell after her doctor's appointment. Campbell needed to know if the claimant could work or what restrictions she received from the doctor.

The claimant assumed she was immediately suspended and did not call or return to work after the May 4 doctor's appointment. The workers' compensation doctor did not restrict the claimant from working. Instead, this doctor gave the claimant some work restrictions such as not lifting more than five pounds and no twisting or bending. The workers' compensation doctor indicated

she could do light-duty work. On May 6, when the claimant had not contacted Campbell, she contacted the claimant because the doctor had also recommended therapy for the claimant and the physical therapist wanted to schedule appointments for the claimant. Campbell told the claimant the employer had light-duty work for her to do and she expected the claimant to follow the doctor's instructions and report to work. The claimant, however, felt she was in too much pain to work and did not return to work. Campbell had told the claimant to report to work because if she was in too much pain to work, the employer would have sent her to the doctor again and wanted the claimant to set up her therapy appointments.

On May 7, the employer received a fax from the claimant's personal physician indicating she could not return to work until May 12, 2009. The claimant did not call, report to work, or talk to Campbell after May 6, 2009. The claimant had an appointment with the workers' compensation doctor on May 11. The claimant did not call or report to work after her May 11 doctor's appointment or on May 12, when her personal physician indicated she could work. When the claimant did not report to work or notify the employer by May 12, the employer no longer considered her an employee.

The claimant did not return to work because she assumed the employer would find a reason to discharge her if she came back to work and she did not like working with co-workers who were not friendly or cooperative. Although the claimant's doctor released the claimant to return to work on May 12, as of July 2 the claimant did not believe she was able to work because she still experienced a great deal of pain.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a.

A preponderance of the evidence establishes the claimant quit her employment by failing to contact the employer after talking to Campbell on May 6. The claimant did not return to work because she did not like her co-workers' attitude and she did not believe the employer wanted her to return to work. Also, even though the claimant's personal physician and the workers' compensation doctor released the claimant to return to work, she did not because her back still hurt.

The claimant's assertion that Campbell told her she was discharged if she did not report to work on May 7 is not credible. This conclusion is based on the fact the claimant presented conflicting testimony as to how long the employer suspended her. It is not logical for the employer to tell the claimant she would be discharged on May 7 if the employer suspended the claimant an additional three days.

While the claimant established personal reasons for quitting, she has not established that she is qualified to receive benefits. As of May 10, 2009, the claimant is not qualified to receive benefits.

DECISION:

The representative's June 10, 2009 decision (reference 05) is affirmed. The claimant voluntarily quit her employment for personal reasons that do not qualify her to receive benefits. The claimant is disqualified from receiving unemployment insurance benefits as of May 10, 2009. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer' account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw