

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRANDI GONZALEZ**  
Claimant

**APPEAL NO: 10A-UI-04590-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PATHWAY LIVING CENTER INC**  
Employer

**OC: 02/21/10  
Claimant: Appellant (2)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

**STATEMENT OF THE CASE:**

Brandi Gonzalez (claimant) appealed an unemployment insurance decision dated March 23, 2010, reference 01, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Pathway Living Center, Inc. (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 6, 2010. The claimant participated in the hearing. The employer participated through Melissa Peterson, Executive Director. Employer's Exhibits One through Three and Claimant's Exhibits A through E were admitted into evidence. 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:**

The issue is whether the employer discharged the claimant for work-related misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a part-time property housekeeping assistant from October 12, 2009 through March 1, 2010. The job description for the property housekeeping assistant provides that the employee must be able to tolerate pets, smoke, noise, and other distractions. The employer issued a written warning to the claimant on February 10, 2010 due to unacceptable attendance. A corrective action plan was prepared that same day but not provided to the claimant on that date.

The claimant was absent due to illness beginning February 15, 2010. She was hospitalized that day for pneumonia and released from the hospital on February 16, 2010 but not released to return to work until February 20, 2010. Her physician recommended the claimant remain unexposed to smoking or second-hand smoking due to the pneumonia and her history of asthma. The claimant provided this excuse to her employer and in a letter dated February 22, 2010 the employer requested additional information regarding the restriction. The employer wanted to know whether the claimant was unable to enter the home of a smoker even if no one

was currently smoking. And/or whether wearing a mask would allow her to perform work in an area where smoke or smoke residue is present. The doctor responded by sending the employer an article about second-hand smoke but did not provide any further details about the restriction.

The employer presented the claimant with the corrective action plan on February 24, 2010 but the claimant refused to sign it. The employer tried to work with the claimant about reasonable accommodations that would allow her to continue working but the claimant required 15 hours per week and the employer could not provide 15 hours of smoke-free work. Consequently, the employer terminated the claimant as of March 1, 2010 due to unsatisfactory attendance.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. All terminations of employment are generally classified as layoffs, quits, discharges or other separations. 871 IAC 24.1(113)(a). 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 has discharged the claimant for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

The evidence establishes the claimant was unable to work due to a non-work-related medical condition. When an employee is unable to work and does not return to work due to a non-work-related medical condition, the separation is typically considered to be a voluntary quit without good cause attributable to the employer. Benefits are then denied until the claimant completely recovers and returns to offer her services to the employer. However, in the case herein, the employer took the first step and discharged the claimant for the same reasons. When the employer initiates a separation, the reasons must constitute work-connected misconduct before a claimant can be denied unemployment insurance benefits. The claimant's separation from employment was not due to any misconduct on her part nor did she quit her job. The claimant is qualified to receive unemployment insurance benefits, provided she is otherwise eligible.

**DECISION:**

The unemployment insurance decision dated March 23, 2010, reference 01, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/css