

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

CATHY J HOGAN
PO BOX 164
NEWTON IA 50208

GOODWILL INDUSTRIES
OF CENTRAL IOWA INC
4900 NE 22ND ST
DES MOINES IA 50313

Appeal Number: 04A-UI-11520-SW
OC: 09/26/04 R: 02
Claimant: Appellant (5)

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

STATEMENT OF THE CASE:

The claimant, Cathy Hogan, appealed an unemployment insurance decision dated October 14, 2004, reference 01, that concluded she voluntarily quit employment without good cause attributable to the employer. A hearing was held on November 16, 2004, in Des Moines, Iowa. The parties were properly notified about the hearing. Hogan participated in the hearing. Larry Hollingsworth participated in the hearing on behalf of the employer with a witness, Heather Marsh. Exhibit One was admitted into evidence at the hearing.

FINDINGS OF FACT:

Cathy Hogan worked for the employer as a store clerk from May 15, 2000, to September 13, 2004. She was informed and understood that under the employer's work rules, employees were required to notify the employer no later than 30 minutes after the start of their shift if they were not able to work as scheduled. Schedules that informed employees of the days and hours

of work were posted a week in advance. This work schedule would have been up on September 13.

Hogan was scheduled to work on September 14. She called and told the store manager, Heather Marsh, she was not reporting to work that day because her life was messed up. Hogan was suffering from emotional problems at the time due to difficulties in her personal life. She had missed a considerable amount of work prior to September 14. As a result, Marsh instructed Hogan that she would need to present a doctor's excuse for the absence to be excused.

Hogan was also scheduled to work on September 15. She called and told another store clerk, Pam Lammey, that she would not be reporting to work that day and doubted she would be coming back to work. She also missed work on September 15 due to emotional problems.

On September 16, Hogan knew she was scheduled to work at 8:00 a.m. She failed to report to work or call the employer regarding her absence within 30 minutes of the start of her shift. She called the employer at 2:40 p.m. and asked Marsh if she still had a job. Marsh told her that she did not have a job because she had been absent without a legitimate excuse or notice to the employer. The employer considered Hogan to have quit by her actions and her statement to Lammey that she doubted she would be coming back to work. Hogan, however, did not intend to quit her employment.

Later that day, Hogan called Marsh and told Marsh that she thought she was scheduled to work at 4:00 p.m. that day. Marsh told her the written schedule said she was to start at 8:00 a.m. Sometime later, Hogan came to the store and looked at the schedule, which showed her 8:00 a.m. start time on September 16. She asked Marsh if she could come back to work. Marsh told her that she would have to talk to Larry Hollingsworth, the human resources director. When Hogan spoke to Hollingsworth, he told her that she could not return to work. Hogan never submitted any doctor's excuse to the employer to cover any of her absences from September 14 to 16.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether Hogan voluntarily quit employment or was discharged. The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. Hogan did not intend to quit her job. As the findings indicate, Hogan told a co-worker that she doubted that she would be returning to work. That is a far cry from expressing a definite intention to quit. She failed to report to work or call on the morning of September 16, but her actions afterward are consistent with those of a person

desired to continue in employment. The employer terminated Hogan's employment by informing her that she no longer had a job.

The next issue in this case is whether Hogan was discharged for work-connected misconduct as defined by the unemployment insurance law.

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).

While Hogan called in on September 14 and 15, her absences were unexcused since there is no evidence that Hogan was incapable of working on these days. The employer reasonably required Hogan to present a medical excuse for the days to be excused. Hogan asserted that she went to her doctor on September 14 and got an excuse for both days and further asserted that she still had the excuse at home. She provided no reasonable explanation, however, for not bringing the note in after her doctor's appointment on September 14 or submitting it the next day when she sent someone else in to work with the store key. She provided no logical explanation for not mentioning the excuse when she spoke to Marsh or Hollingsworth or for not presenting it at the hearing. Finally, I do not find Hogan's testimony that she thought she was supposed to work at 4:00 p.m. on September 16 to be at all credible. She could not explain why she called Hogan at 2:30 p.m. to find out if she had a job if she truly believed that she was scheduled to work at 4:00 p.m. The only rational reason for the call is she knew that she had missed work without notifying the employer that morning.

Hogan's conduct on September 14, 15, and 16 was 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 an employee. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated October 14, 2004, reference 01, is modified with no affect on the outcome of the case. Cathy Hogan was discharged for work-connected misconduct. 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.

saw/tjc