

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STACEY L WADE-WENTZ
Claimant

APPEAL NO. 13A-UI-02969-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE HON COMPANY
Employer

OC: 02/03/13
Claimant: Appellant (5)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 5, 2013, reference 01, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on April 11, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Deneice Norman participated in the hearing on behalf of the employer with witnesses, Kourtney Foxx and Jessica Gofforth. Exhibit A was admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer from October 22, 2007, to January 18, 2013. 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 subject to discharge after three days of absence without notice.

The claimant was sick and unable to work from January 21 through 25, 2012, with proper notice to the employer. She had a doctor's excuse for the days she missed and a release to return to work on January 28, 2012.

The claimant failed to return to work on January 28, 29, and 30 and failed to call in to notify the employer that she would not be reporting to work those days. This was because she had called and left a message during the week she was off work for one of the Member and Community Relations Business Partners, Kourtney Foxx, inquiring about how much Family and Medical Leave Act (FMLA) leave she had available. Foxx tried calling her back and discovered that the phone was disconnected. The claimant assumed that she did not get a return call back, that she did not have any FMLA available and she was terminated.

After the claimant was absent without notice on January 28, 29, and 30, the employer considered her to have abandoned her job and sent a letter terminating her employment on that basis. In fact, if the claimant had returned to work with a doctor's excuse on January 28, she would not have been subject to discharge under the employer's attendance policy.

REASONING AND CONCLUSIONS OF LAW:

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 unemployment insurance rules state that a claimant absent for three days without giving notice to employer in violation of company rule is presumed to have quit employment without good cause attributable to the employer. 871 IAC 24.25(4). Although a case could be made that the claimant voluntarily quit by failing to report to work or call in for three consecutive days, the employer's work rules provide that a claimant is discharged for failing to report to work or call in for three consecutive days and a letter of termination was sent to the claimant. The separation shall be treated as a discharge.

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

The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's assumption that she no longer had a job because she did not get a return call about where she stood on FMLA was unreasonable. She should have reported to work on January 28 as her doctor had released her. Her failure to report to work or call in to report her absences starting January 28 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 the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated March 5, 2013, reference 01, is modified with no change in the outcome. The claimant 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.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs