

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

LINDA L BAKER
907 NORMAL
WOODBINE IA 51579

JENNIE EDMUNDSON
MEMORIAL HOSPITAL
ATTN HUMAN RESOURCES DEPARTMENT
933 E PIERCE ST
COUNCIL BLUFFS IA 51503

Appeal Number: 04A-UI-10704-RT
OC: 09-05-04 R: 01
Claimant: Respondent (1)

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 for Misconduct
Section 96.5-1 – Voluntary Quitting
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Jennie Edmundson Memorial Hospital, filed a timely appeal from an unemployment insurance decision dated September 27, 2004 reference 02, allowing unemployment insurance benefits to the claimant, Linda A. Baker. After due notice was issued, a telephone hearing was held on October 25, 2004, with the claimant participating. Kathy Heuwinkel, Benefits Specialist, and Raymond Redding, Team Leader on the Evening Shift in Charge of Housekeeping, participated in the hearing for the employer. Employer's Exhibit 1 was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibit 1, the administrative law judge finds: The claimant was employed by the employer as a full-time cleaning technician from August 18, 2003 until she separated from her employment on August 31, 2004. On or about August 9, 2004, the claimant learned that she would be carrying out new cleaning assignments. Previously the claimant had cleaned the cafeteria, labs, emergency room, and patients' rooms. The claimant was to be assigned new areas, including the X-ray department and the morgue. The claimant was also to go to a new shift. The claimant did not object to the new shift, but felt she needed training for the new areas. On August 30, 2004, the team leader on the evening shift in charge of housekeeping, Raymond Redding, one of the employer's witnesses, told the claimant that she was to go around on a walk-through with the person who had been cleaning the new rooms. The claimant did so. The walk-around lasted approximately 30 to 45 minutes. At that time the claimant expressed concerns to Mr. Redding about her lack of training for cleaning the new rooms. The next day, August 31, 2004, while working her new shift from 5:00 p.m. to 1:30 a.m. and cleaning the X-ray department, between 8:00 p.m. and 8:30 p.m. the claimant paged Mr. Redding to come to the office. He did so and at that time the claimant expressed concerns to him about not being fully trained to clean the various new areas, including the X-ray department and the morgue. Mr. Redding replied that the claimant could do it. Additional words were had between the two and the claimant turned in her keys and identification badge and left in the middle of her shift. The claimant has not returned to the employer and offered to go back to work. The claimant had also expressed concerns to Mr. Redding at 5:00 p.m. when she started her shift, about her qualms about cleaning the new areas without training. The claimant was in the process of being trained for these areas at the time. When the claimant was hired, she was not promised that she would be cleaning any particular area, but was told that she would be trained in the cleaning all of the areas. The claimant had expressed no other concerns to the employer about her working conditions and had never indicated or announced an intention to quit over her concerns. The employer has a policy in its personnel handbook, a copy of which the claimant received and for which she signed a acknowledgement, providing that upon job abandonment the employee is not eligible for rehire. On September 1, 2004, the claimant spoke to Martha Zubke, Vice President of Human Resources, and asked that she be reinstated to her position. Ms. Zubke informed the claimant that she would need to follow up with her supervisor, and was informed on September 8 that she would not be reinstated. Mr. Zubke then sent out a letter to that effect dated September 13, 2004, as shown at Employer's Exhibit 1. Pursuant to her claim for unemployment insurance benefits filed effective September 5, 2004, the claimant has received unemployment insurance benefits in the amount of \$1,535.00 as follows: \$239.00 for benefit week ending September 11, 2004 (zero earnings); \$101.00 for benefit week ending September 18, 2004 (\$138.00 earnings or vacation pay); and \$239.00 for five weeks from benefit week ending September 25, 2004 to benefit week ending October 23, 2004.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was not.
2. Whether the claimant is overpaid unemployment insurance benefits. She is not.

Iowa Code Section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Code Section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
 - a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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).

The first issue to be resolved is the character of the separation. The employer maintains that the claimant voluntarily quit when she left work in the middle of her shift on August 31, 2004 and turned in her identification badge. The claimant is equally adamant that she was discharged in the middle of her shift on August 31, 2004 when she was told to turn in her keys and her identification badge. The administrative law judge concludes that the employer has the burden to prove that the claimant left her employment voluntarily. Although it is a close question, the administrative law judge concludes that the employer has failed to meet its burden of proof to demonstrate by a preponderance of the evidence that the claimant left her employment voluntarily. The resolution of this issue depends upon a conversation between the

claimant and the employer's witness, Raymond Redding, Team Leader for the Evening Shift in Charge of Housekeeping. The claimant testified that she was concerned about the training she was receiving for the newly assigned areas for her cleaning. She testified that when she approached Mr. Redding at between 8:00 p.m. and 8:30 p.m. and asked for additional training and expressed her concerns about the lack of training she had had that Mr. Redding asked the claimant if she was giving notice and she said no, she was not quitting, that she just wanted the training. The claimant then testified that Mr. Redding said, all I want is your keys and identification badge. The claimant then asked if he wanted them now in the middle of her shift and he responded in the affirmative. The claimant then testified that she gave her keys and identification badge to Mr. Redding and left in the middle of her shift. Mr. Redding testified that the claimant simply told him that she was quitting because there was too much work and handed in her identification badge and left the building. This conversation is a "he said, she said" situation. Both witnesses are more-or-less credible. Upon the state of the record here, the administrative law judge is constrained to conclude that there is not a preponderance of the evidence that the claimant left her employment voluntarily. Accordingly, the administrative law judge concludes that the claimant was discharged on August 31, 2004. This conclusion is somewhat supported by the letter at Employer's Exhibit 1. That letter states that the claimant called ". . . asking to be reinstated . . ." A reinstatement appears to support the conclusion that the claimant was discharged. If the claimant had quit, perhaps the employer would have used language such as wanted to be rehired, or wanted to revoke or rescind her quit, but that is not the language used. The administrative law judge concedes that this is a close issue, but concludes that the claimant was discharged on August 31, 2004.

In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. It is well established that the employer has the burden to prove disqualifying misconduct. See Iowa Code section 96.6(2) and Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (Iowa 1982) and its progeny. The administrative law judge concludes that the employer has failed to meet its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. Since the administrative law judge concluded that the claimant was discharged, it follows that she was discharged because she repeatedly requested training from Mr. Redding, which training or assistance he refused. Mr. Redding denies that the claimant requested any training or any assistance, but this is not credible to the administrative law judge. The claimant testified credibly that she had been, for approximately one year, assigned to cleaning the cafeteria, labs, emergency room, and patients' rooms. She further credibly testified that on or about August 9, 2004 she learned she was to be assigned to new areas, including the X-ray department and the morgue. The administrative law judge would understand how these departments might require greatly different cleaning processes. The claimant testified that the only training she received was a walk-through with the person who had been responsible for cleaning those rooms on August 30, 2004, which walk-through was only of the X-ray department and only took 30 to 45 minutes. The administrative law judge understands the claimant's concern about complete instruction and training about how to properly clean these areas. The claimant requested such training and was discharged. It is true that the evidence shows that the claimant was in the process of being trained but that she was expressing concerns about that training. The administrative law judge concludes that the claimant's expressions of concern here are justified and are not deliberate acts or omissions constituting a material breach of her duties, nor do they evince a willful or wanton disregard of an employer's interest, nor are they carelessness or negligence in such a degree of recurrence so as to establish disqualifying misconduct. Accordingly, the administrative law judge concludes that the claimant was discharged, but not for disqualifying misconduct and, as a consequence, she is not disqualified to receive unemployment insurance benefits. Misconduct

serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment insurance benefits and misconduct to support a disqualification from unemployment insurance benefits must be substantial in nature. Fairfield Toyota, Inc. v. Bruegge, 449 N.W.2d 395, 398 (Iowa App. 1989). The administrative law judge concludes that there is insufficient evidence here of substantial misconduct on the part of the claimant to warrant her disqualification to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant, provided she is otherwise eligible.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$1,535.00 since separating from the employer herein on or about August 31, 2004 and filing for such benefits effective September 5, 2004. The administrative law judge further concludes that claimant is entitled to these benefits and is not overpaid such benefits.

DECISION:

The representative's decision dated September 27, 2004, reference 02, is affirmed. The claimant, Linda L. Baker, is entitled to receive unemployment insurance benefits, provided she is otherwise eligible, because she was discharged but not for disqualifying misconduct. As a result of this decision the claimant is not overpaid any unemployment insurance benefits arising out of her separation from the employer herein.

b/kjf