

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MAVIS A ADJEI
Claimant

APPEAL NO: 14A-UI-09024-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PREMIER STAFFING INC
Employer

OC: 07/13/14
Claimant: Appellant (2/R)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's August 25 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant participated at the September 23 hearing. Amy Reisner, an account manager, appeared on the employer's behalf. Eugene Frimpong interpreted the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes that based on the reasons for the claimant's June 7 employment separation, the claimant is qualified to receive benefits.

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:

On January 29, 2014, the employer assigned the claimant to work for one of the employer's clients. The claimant worked as a full-time production employee. The client's attendance policy informs employees that if they accumulate 12 attendance points, they can no longer work for this client. Although the claimant does not remember the employer talking to her about her attendance, the employer recalled talking to the claimant in late April about her attendance. The claimant had called in to report she was ill and unable to work. As a result of this absence, the claimant had accumulated eight attendance points. The employer told the claimant she had eight points and to be careful about her absences.

On June 7, 2014, the claimant was getting to go to work when Reisner called and told her she was no longer needed at the job where she had been working. The client had contacted the employer and told the employer that the client did not want the claimant to return to their facility because of on-going attendance issues. The employer understood the claimant had not called or reported to work the day before. As a result of this absence the client gave the claimant six attendance points and ended her assignment for accumulating 14 attendance points.

Even though the client ended the claimant's assignment, the employer did not and talked to the claimant about another assignment on June 16, 2014. On June 16, the claimant told the employer she was ill and could not accept a job. The employer asked the claimant to contact them when she was again able to and available for work. The claimant did not contact the employer again.

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. The evidence does not establish that the claimant quit her employment. Instead, her employment ended after a client told the employer the claimant was not to return to work for them. Even though the client indicated the claimant had on-going attendance issues, the employer planned to assign her to another job. When the claimant was told that her job assignment ended on June 7, she became unemployed. For unemployment insurance purposes, the employer ended the claimant's assignment because the employer's client did not want the claimant to work any longer.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

Even though the client no longer wanted the claimant to work at its facility, the employer intended to assign the claimant to another job. The claimant's testimony that she had worked the day before, must be given more weight than the employer's reliance on hearsay information from a client who did not testify at the hearing. The evidence does not establish the claimant failed to call or report to work the day the employer ended this assignment. The facts do not establish that the claimant committed work-connected misconduct. Therefore, based on the reasons for her June 7 employment separation, the claimant is qualified to receive benefits.

The issues of whether the employer offered the claimant a suitable job and if the claimant is able to and available for work as of July 13, 2014, are issues that will be remanded to the Benefits Bureau to investigate and make a written determination.

DECISION:

The representative's August 25, 2014 determination (reference 01) is reversed. The claimant did not quit her employment on June 7. The employer ended the claimant's employment on June 7 because its client no longer wanted the claimant working at its facility. Based on the evidence presented at the hearing, the claimant did not commit work-connected misconduct. Therefore, as of July 13, 2014, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

The issues of whether the claimant is able to and available for work as of July 13, 2014, and if the employer offered her suitable work are **Remanded** to the Benefits Bureau to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css