

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY A BRANDT
Claimant

APPEAL NO. 10A-UI-13812-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NEIGHBORHOOD PATROL INC
Employer

OC: 09/05/10
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's September 30, 2010 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant participated in the telephone hearing. Dick Rodgerson and Rick German appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds 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:

The claimant started working for the employer as a full-time security guard at the Wells Fargo executive center in February 2007. The claimant was off work on September 2 and 3. She was scheduled to work again on September 5 and 6. On August 31 or September 1, the claimant took home the pictures she had of her family at work to show her sister who she was going to see. On September 1, the claimant was upset that one of two computers was removed from her desk. When the claimant contacted German about this, he understood she was very upset.

On Thursday morning, the claimant contacted M.K. She called him to ask him to let her know when another job site was open. The claimant wanted to know about other job opportunities when they came up in case she wanted to transfer to another job site. M.K. told German or German understood that when the claimant talked to M.K., she had asked M.K. to transfer her to another job site. After learning the claimant had talked to M.K., the employer then learned she did not have any personal items on or in her desk.

The employer did not want the claimant to work at Wells Fargo if she was angry or did not want to work there. The employer made arrangements for another employee to cover the claimant's Sunday and Monday shifts. The employer left a message for the claimant to meet with German on Tuesday morning. During the Tuesday meeting, the claimant indicated she would prefer not

to work at the present location, but she did not say she would not work at her present location. The claimant and her supervisor did not get along and had some problems the last two years. The employer decided that if the claimant did not want to work at her current job site and was not happy there, the employer did not want her to work there. It was not in the employer's best interest to have a guard work at location that the guard did not want to work. The employer told the claimant she no longer worked at the Wells Fargo location but the employer did not have another job site to transfer her to. The employer then ended the claimant's employment on Tuesday, September 7, 2010.

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. Even if the claimant asked to be transferred, a transfer request is not the equivalent of quitting. The claimant had no intention of quitting or ending her employment. Instead, the employer made the decision to end the claimant's employment.

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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established business reasons for ending the claimant's employment. The fact the claimant did not always get along with her supervisor and used poor judgment when she allowed a person to go inside Wells Fargo at the west end does not establish that she committed work-connected misconduct. While the claimant's supervisor talked to her about problems that occurred, the claimant had no idea her job was in jeopardy. The evidence does not establish that the claimant committed work-connected misconduct. Therefore, as of September 5, 2010, the claimant is qualified to receive benefits provided she meets all other eligibility requirements.

DECISION:

The representative's September 30, 2010 determination (reference 01) is reversed. The claimant did not voluntarily quit her employment. Instead, the employer ended the claimant's employment for reasons that do not constitute work-connected misconduct. As of September 5, 2010, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw