

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNI GREEN
Claimant

APPEAL NO: 11A-UI-03865-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOSAIC
Employer

OC: 02-20-11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 21, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 18, 2011. The claimant participated in the hearing. Deb Grant, Office Manager; Linda Karley, Program Coordinator; Rita Gochanour, Director Support Manager; and Attorney Jamie Cooper, participated in the hearing on behalf of the employer. Employer's Exhibits One through Six were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time direct support specialist/medical manager for Mosaic from December 12, 2005 to February 21, 2011. She took the weekend off February 19 and 20, 2011, due to illness. She notified the employer and went to the doctor's office where she was diagnosed with an inner ear and sinus infection. The doctor's office faxed the employer a medical excuse taking her off work for two days and the claimant called the employer's office afterward to confirm it received the fax. The fax had not arrived at that point so the claimant called again after she picked up her prescription and the fax had arrived. The claimant went home, turned off her phone and went to bed. The claimant turned on her cell phone February 20, 2011, around 5:30 p.m. and saw a voice message from her Supervisor Rita Gochanour. She immediately called the employer and Ms. Gochanour asked where she was and told her she needed to be at work. She informed the claimant that the note took her off work February 18 and 19, 2011, instead of February 19 and 20, 2011. Ms. Gochanour told the claimant she needed to report to work "or else." She yelled at the claimant and told her that action was going to be taken against her. The claimant called the employer February 21, 2011, and asked Linda Karley, Program Coordinator, if she was fired or in trouble. Ms. Karley told the claimant to come to work to talk about it but when the claimant arrived, Ms. Karley did not speak with her. Ms. Gochanour gave the claimant a written warning and the claimant read it and then wrote comments. Ms. Gochanour became upset about the comments and refused to sign it

but the claimant signed it. Ms. Gouchanour asked the claimant for her keys and the claimant turned them over and left. Office Manager Deb Grant called the claimant later that day and asked her about the situation. The claimant said she was fired and Ms. Grant said she would look into it. Ms. Grant then called the claimant again and asked her what she wanted to do. The claimant wanted an apology from Ms. Gouchanour and Ms. Grant said she would call back. On the third telephone call, Ms. Grant told the claimant she needed a letter of resignation and the claimant told her she had not quit her job. The claimant did not return to work and she was subsequently admitted to the hospital for suicidal thoughts.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying misconduct.

The employer contends the claimant quit and the claimant maintains she was discharged. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. 871 IAC 24.25. A voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant had no intent to quit and specifically told the employer she was not voluntarily quitting her job. Consequently, the separation must be analyzed as a termination from employment.

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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant's physician faxed a doctor's excuse to the employer on her behalf but inadvertently excused her from work February 18 and 19, 2011, rather than February 19 and 20, 2011. The claimant was unaware of the error on the doctor's note and turned off her phone and went to bed because she was ill. When she woke up and checked her messages she received the message from her supervisor and returned her call. The employer demanded that she come to work "or else." She went to work for an expected meeting at the employer's direction February 21, 2011, but instead her supervisor met her with a written warning. The claimant signed the warning but commented about the incident, angering her supervisor who refused to sign the warning and asked the claimant for her keys. When called about the incident by the office manager the claimant clearly said she was not quitting her job. The claimant did ask for an apology from her supervisor and the office manager said she would call her back. When she did so she asked the claimant for a letter of resignation which the claimant refused to provide because she had no intention of leaving her position. The employer has not established any act of misconduct on the part of the claimant which would rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The March 21, 2011, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css