

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAUNAE L REGULUS

Claimant

APPEAL NO. 13A-UI-10564-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HCM INC

Employer

OC: 07/28/13

Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 5, 2013, (reference 04) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 9, 2013. Claimant participated. Employer participated through administrator, Michael Blume. Employer's Exhibit 1 was received. Assistant DON Candi Bolin did not participate because she was ill. The record was not left open for her participation because she does not have first-hand information about the reasons for the separation.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a certified nursing aide (CNA). Her last day of work was July 27, 2013. On July 20, she gave written notice of her resignation to be effective August 4, 2013, but was terminated on July 27, before the notice period expired. (Employer's Exhibit 1) Claimant gave her notice on July 20 after she reminded DON Joyce Graves (whose separation was August 30, 2013) about not wanting to be assigned to a hall with a resident she had accused of sexually harassing her. Graves and Blume had agreed to limit her work with the resident but had not promised claimant would never work on that hall. The residents have various physical and mental health issues contributing to their behaviors. Graves assigned her to another hall with a new CNA and told claimant to be nice to her. Claimant was offended by the request even though Graves had discussions with her about her "attitude" but had not written her up for it. Continued work was available.

On July 27, claimant complained that she was assigned to a hall with a new CNA aide rather than with a med aide (OMP) who was familiar with Hoyer lift operation. After some discussion

back and forth with corporate, Graves told her to clock out and leave with one week left on the resignation notice.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer, but was discharged for no disqualifying reason prior to the intended resignation date.

Iowa Code § 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 § 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.

871 IAC 24.25(38) provides:

Voluntary quit without good cause. 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. The employer

has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

Claimant's decision to quit because she did not want to work with a particular resident or two new CNAs did not amount to a good cause reason attributable to the employer for leaving the employment. Because the employer terminated the employment relationship in advance of the resignation notice effective date, the claimant is entitled to benefits from the date of termination until the effective date of the proposed resignation.

DECISION:

The September 5, 2013, (reference 04) decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer, but was discharged prior to the resignation effective date. Benefits are allowed through August 3, 2013. Thereafter, benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times her weekly benefit amount.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css