

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA L BROCKERT
Claimant

APPEAL NO. 09A-UI-00563-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIVE-J INC
Employer

OC: 12/07/08 R: 04
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated January 8, 2009, reference 01, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on January 29, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Eric Whittmann. Penny Evans participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a CNC operator in the milling department. Darren Holiday was her supervisor. Jason Weatherman was her group lead. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled.

On March 27, 2008, the claimant was warned about her excessive absences and placed on a six-month probation. She was counseled again on June 24 due to an unexcused absence on June 23. On November 14, she was suspended for one day for (1) calling in late to report an absence on October 31, (2) reporting to work late without calling on November 10, and (3) calling in late to report her absence on November 13. She was told that she could be discharged for failing to follow the company's call-in procedure in the future.

On December 2, the claimant reported to work as scheduled but became sick early in her work shift. She informed her group lead, Jason Weatherman, that she was sick and needed to leave work. The claimant had previously been given permission to take vacation for four hours at the end of her shift. Weatherman asked her to try working until the time that she was scheduled to leave, but the claimant was unable to work due to illness. Weatherman informed the claimant that if she left, it would be considered an unapproved absence.

The claimant left work about 45 minutes into her shift. On the afternoon of December 2, Weatherman called the claimant and told her that she should not return to work because she no longer had a job. Weatherman does not have the authority to discharge employees, but the claimant did not know this so she stopped reporting to work. The human resources manager considered the claimant to have quit employment when she did not return to work on December 3, 4, and 5, 2008.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code section 96.5-1 and 96.5-2-a. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified credibly and her testimony was corroborated by her witness that Weatherman informed her she no longer had a job. The employer's evidence to the contrary is hearsay. The claimant's evidence outweighs the employer's. The claimant reasonably believed she was discharged and did not intend to quit her employment. The separation from employment must be treated as a discharge.

The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

Work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case. She was absent from work on December 2 due to legitimate illness and her failure to report to work afterward was due to reasonable belief that she had been discharged.

DECISION:

The unemployment insurance decision dated January 8, 2009, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs