

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CYNTHIA J SCOTT
Claimant

APPEAL NO. 10A-UI-04431-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

**Original Claim: 02/21/10
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Care Initiatives filed an appeal from a representative's decision dated March 17, 2010, reference 01, which held that no disqualification would be imposed regarding Cynthia Scott's separation from employment. After due notice was issued, a hearing was held by telephone on May 6, 2010. Ms. Scott participated personally and offered additional testimony from Ginny James. The employer participated by Loretta Sloss, Administrator; Nancy Savage, Dietary Supervisor; and Tammy Evans, Business Office Assistant. The employer was represented by Tom Kuiper of TALX Corporation.

ISSUE:

At issue in this matter is whether Ms. Scott was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Scott began working for Care Initiatives on March 12, 2008 and worked full-time as a cook. On February 17, 2010, she was told by her supervisor that she was being disciplined due to attendance. She was told she had seven call-ins since October of 2009. Ms. Scott became angry and upset and told the supervisor she was leaving if she was to be disciplined. She then went to see the administrator, Loretta Sloss, regarding the disciplinary action. The administrator was not present and, therefore, Ms. Scott proceeded to speak to the business office manager to let her know she wanted to talk to the administrator. When Ms. Scott indicated she would be leaving, she was told she would be considered to have abandoned her job if she left before the end of her shift.

Ms. Scott was scheduled to leave work between 1:30 and 2:00 p.m. on February 17. She actually left at approximately noon. She continued to try to reach Ms. Sloss on February 17 but was unable to do so. Ms. Sloss left a message for Ms. Scott on February 17 at some point after 6:00 p.m. Ms. Scott called her back on February 18 but had to leave a message. On that same date, a letter was sent advising Ms. Scott that she no longer had employment with Care Initiatives.

REASONING AND CONCLUSIONS OF LAW:

The threshold determination to be made is whether Ms. Scott's separation was a quit or a discharge. In order to find a quit, there must be evidence of an intention to sever the employment relationship accompanied by some overt act carrying out that intent. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The employer contended that Ms. Scott quit by walking off the job on February 17. However, the fact that after she left, she continued to try to reach the administrator about the proposed disciplinary action indicates an intention to remain in the employment. In the case of Peck v. Employment Appeal Board, 492 N.W.2d 438 (Iowa App 1992), the claimant walked off the job without permission before the end of his shift and indicated he wanted to meet with management. The court ruled that this was not a voluntary quit, because the expressed desire to meet with management indicated a desire to remain in the employment.

It was the employer that initiated Ms. Scott's separation from employment by not allowing her to continue the employment. Therefore, the separation was a discharge. See 871 IAC 24.1(113)c. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Prior to Ms. Scott leaving on February 17, the employer only intended to give her a verbal warning regarding her attendance. Clearly, the employer did not feel her attendance at that point warranted discharge.

Ms. Scott's departure on February 17 was, at most, a period of unexcused absenteeism. She had had prior conflicts with the supervisor who was disciplining her on February 17 and was upset and crying over the proposed disciplinary action to be taken that day. Under the circumstances, her unexcused absence for the balance of her shift did not evince a willful or wanton disregard of the employer's standards or excessive unexcused absenteeism. While the employer may have had good cause to discharge her, conduct that might warrant a discharge will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons cited herein, benefits are allowed.

DECISION:

The representative's decision dated March 17, 2010, reference 01, is hereby affirmed. Ms. Scott was discharged by Care Initiatives, but misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw