

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBYN D EDWARDS

Claimant

APPEAL NO: 11A-UI-07913-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA

Employer

OC: 05/15/11

Claimant: Appellant (5)

Iowa Code § 96.5(1) – Voluntary Quit

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's June 6, 2011 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant participated in the hearing. Kelley Landolthi, a representative with Barnett Associates, represented the employer. David Dueling, a collection manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that do not qualify her to receive benefits or did the employer discharge her for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in January 2009. She worked as a full-time collection representative. Her supervisor was Mike Alphson.

After the claimant came back from a leave of absence in early February 2011, she had issues performing her work satisfactorily. Prior to April 14, 2011, the claimant received a final warning for work performance issues.

On April 13, the claimant received a call that her mother had to go to Osceola because her father was not well. The claimant understood Alphson gave her permission to leave work early for personal reasons. Alphson did not document that he gave the claimant permission to leave work early because her father was ill. Alphson reported the claimant left work without notifying a supervisor and he unsuccessfully tried calling her after she left work early.

The claimant worked Sunday through Thursday. The employer does not have a record of the claimant calling the attendance line or talking to anyone at work to let Alphson know she would not be at work on April 14, 17, 18 or 19. When the claimant returned to her residence on

April 20, she received a letter from Alphson informing her that because she had not been at work since April 13, the employer considered her to have voluntarily quit her employment.

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. The facts do not establish that the claimant quit her employment. Instead, the employer initiated the employment separation when the April 18 or 20 letter was sent to the claimant.

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).

Since Alphson did not testify at the hearing, the claimant's testimony that she talked to him before she left work on April 13 must be deemed more reliable than Dueling's unsupported hearsay information. The undisputed facts establish the claimant did not work as scheduled on April 14, 17, 18 or 19.

A credibility issue must be resolved about whether the claimant called the employer to report she was unable to work April 14, 17, 18 and 19. The employer's records do not establish the claimant called the attendance phone line or talked to anyone these days. The claimant testified she called the attendance line on April 14 and later testified she talked to Adam on April 14. The claimant also testified that she called the employer on April 16 and talked to Dave Walker to tell him she would not be at work the next day. Since the employer does not have a record of any of these calls and, the claimant's testimony changed as to who she called or talked to on April 14, the administrative law judge concludes the claimant's testimony about calling the employer is not credible. The credible evidence establishes the claimant did not notify the employer she was unable to work on April 14, 17, 18 and 19. As a result of the claimant's failure to properly notify the employer she was unable to work, she disregarded the standard of behavior the employer has a right to expect from an employee. The claimant committed work-connected misconduct. As of May 15, 2011, the claimant is not qualified to receive benefits.

DECISION:

The representative's June 6, 2011 determination (reference 01) is modified, but the modification has no legal consequence. The claimant did not voluntarily quit her employment. Instead, the employer discharged her for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of May 15, 2011. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs