

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VALARA AKINS
Claimant

APPEAL NO. 11A-UI-11233-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IAC IOWA CITY LLC
Employer

OC: 02/27/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated August 24, 2011, reference 04, which denied unemployment insurance benefits, finding the claimant voluntarily quit work without good cause. After due notice was issued, a telephone hearing was held on September 20, 2011. The claimant participated. The employer participated by Ms. Theresa Feldmann, assistant human resource manager.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Valara Akins began her employment with IAC Iowa City LLC on June 10, 2011. The claimant was hired to work as a full-time machine operator and was being paid by the hour.

On July 1, 2011, Ms. Akins was unable to report for work due to an injury or illness caused by other employment. On July 7, 2011, Ms. Akins visited with the company's assistant human resource manager. The claimant had received a light-duty release from her physician, but no work was available to the claimant, because the work injury did not take place at IAC Iowa City LLC. Because the claimant was a new, probationary employee, Ms. Feldmann indicated to Ms. Akins that she would be discharged for continuing absence; because, as a probationary employee, attendance during the probationary period is critical.

Based upon statements made to her that day, Ms. Akins concluded that she should submit her resignation in lieu of being discharged and thus preserve her eligibility for re-hire with the company in the future.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes disqualifying conduct on the part of the claimant. It does not.

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.

In this case, Ms. Akins submitted her resignation in lieu of being discharged on July 7, 2011, because she was unable to report for work with a full release and had been informed that she was subject to being discharged for absence as a new, probationary employee.

The administrative law judge concludes, based upon the evidence in the record, that Ms. Akins did not choose to voluntarily relinquish her position with the company but did so because she reasonably believed that discharge was imminent based upon statements from the company's assistant human resource manager. Ms. Akins could not report for scheduled work, as she did not have a full release from her doctor. Although the claimant was willing to continue working for the company with a light-duty limitation, the employer would not allow her to return, as her injury or illness was not related to her employment with the company.

Because the claimant did not engage in willful misconduct and was unable to report for continuing employment due to a medical reason, the administrative law judge concludes the claimant's separation from employment took place under non-disqualifying conditions.

DECISION:

The representative's decision dated August 24, 2011, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw