

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DENISE H DUNN
Claimant

APPEAL 15R-UI-10534-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF IOWA CITY
Employer

**OC: 06/21/15
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 24, 2015, (reference 08) unemployment insurance decision that denied benefits based upon the determination she voluntarily quit her employment without good cause attributable to the employer. The parties were properly notified about the hearing. A telephone hearing was held on October 7, 2015. Claimant Denise Dunn participated on her own behalf. Employer City of Iowa City did not participate.

ISSUES:

Did the claimant voluntarily leave the employment with good cause attributable to the employer, did the employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits, or does she remain employed as an on-call employee?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is employed as an on-call water instructor with this employer. She has been in this position since March 2013. She remains employed under this same contract of hire.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant has not been separated from this employer.

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.

Iowa Admin. Code r. 871-24.22(2)i(3) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market....

i. On-call workers.

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code § 96.19(38)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

Because claimant was hired to work only on-call or as-needed, she is not considered unemployed within the meaning of the law as it pertains to this employer. The claimant remains employed with the employer under her original hours and wages from when she was hired. When an individual is hired to work on-call, the implied agreement is that they will only work when work is available and that work will not be regularly available. However, since the claimant has been separated from another employer, she may be eligible for benefits based on that separation. Accordingly, benefits may be allowed if the claimant is otherwise eligible and the account of the employer (102469) shall not be charged.

DECISION:

The July 24, 2015, (reference 08) unemployment insurance decision is reversed. The claimant remains employed with the employer under the same wages and hours as agreed upon contract of hire. Benefits may be allowed if claimant is otherwise eligible and the account of City of Iowa City (account number 102469) shall not be charged.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/pjs