

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIE STOKELY
Claimant

APPEAL NO: 08A-UI-06835-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PER MAR SECURITY & RESEARCH CORP
Employer

OC: 06/22/08 R: 01
Claimant: Respondent (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Per Mar Security & Research Corporation (employer) appealed an unemployment insurance decision dated July 17, 2008, reference 01, which held that Julie Stokely (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 11, 2008. The claimant participated in the hearing. The employer participated through Amy Goodwin, Manager of Employer Benefits and Worker's Compensation and Donna Mulder, Payroll Human Resources Specialist. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time security officer from June 19, 2007 through March 6, 2008 which was her last day of employment. She sustained a work-related injury and was off work until June 3, 2008 when she was released part-time. On that date, she contacted her supervisor to advise that she was released part-time. The release was faxed to the employer by the doctor's office and it was received. She was scheduled to return to work on June 9, 2008 but was called by her supervisor on June 8, 2008 and advised that there was no work available at the location at which she had most recently worked. The claimant called her former boss and obtained Amy Goodwin's name and number, whom the claimant contacted on June 10, 2008. Ms. Goodwin advised the claimant she would be contacted but no contact was made. The claimant learned from a family member that she had been placed on the schedule and was marked as a no-call/no-show because she failed to report to work. The claimant had not been notified to return to work so she called Ms. Goodwin to find out what was going on. Ms. Goodwin said did not know what was going on except that the claimant's supervisor reported she was a no-call/no-show. She received a message on

June 23, 2008 from her supervisor that she was terminated for four no-call/no-shows and that she needed to return her uniforms, which she did.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer or if the employer discharged her for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

The claimant and the employer provided contrary evidence as to how the separation occurred. While both parties appeared equally credible, the employer was not found as forthcoming as the claimant. The employer failed to mention a medical release dated June 3, 2008 until after the claimant testified about it. Additionally, the claimant provided testimony regarding statements made to her by her supervisor, who did not participate in the hearing. Consequently, the claimant's testimony was given more weight than the employer's.

Rule 871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The claimant was consistent in expressing her wish to return to work with the employer. In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant did not exhibit the intent to quit and did not act to carry it out. Since the claimant did not have the requisite intent necessary to sever the employment relationship so as to treat the separation as a "voluntary quit" for unemployment insurance purposes, it must be treated as a discharge.

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.

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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for four consecutive no-call/no-shows. However, she was not advised she was placed on the schedule until after the fact. The employer has failed to meet its burden. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

DECISION:

The unemployment insurance decision dated July 17, 2008, reference 01, is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs