

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BELINDA S ALLEN
Claimant

APPEAL NO: 13A-UI-05594-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 04/07/13
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's April 29, 2013 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. Bruce Burgess represented the employer, and Randy Beimer, the human resource manager, testified 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 qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that 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 October 2007 as a night stock clerk. Until January 2013, the claimant usually worked 40 or more hours a week. As of January 2013, her scheduled hours were reduced to 24 hours a week. On January 14, 2013, Rob Dains became her supervisor. The claimant and Dains did not get along. She believed he would try to discharge her employment if she was not submissive and Dains did not think that employees on the same shift should be dating one another.

In early January 2013, the claimant talked to the store director when her previous supervisor had promised she would become a full-time employee in early January and this did not happen. The store director indicated she had not been made a full-time employee because she argued with a manager.

The claimant properly notified the employer on February 24 that she was ill and unable to work as scheduled that night. The claimant reported to work as scheduled on February 25. About an hour after her shift started, Dains approached her and asked if she had a doctor's note. The claimant asked why she needed a doctor's note when she had only called off one night, the night before. The employer's policy informs employees they need a doctor's note to return to work if they are absent for two or more consecutive shifts. Dains responded that the store

director said she needed one. The claimant asked Dains again why she needed a doctor's note when she did not have an attendance problem. Dains became angry and turned to walk away. The claimant then asked if he wanted her to go home because she did not have a doctor's note. Dains turned around and yelled at the claimant, "Yes, I want you to go home." The claimant left work as Dains directed her to do.

The next night the claimant was scheduled to work. She went to work, but saw her name crossed off the scheduled for that night and the rest of the week. Later, the claimant's boyfriend told her that Dains told him that he wanted the claimant to return to work so she could sign termination papers. Since Dains had told the claimant that the store director said she needed a doctor's note, the claimant concluded the store director had also authorized her employment termination. The claimant believed she had been discharged for questioning Dains' directive that she needed a doctor's note for the one night she was absent.

The employer's electronic schedule indicated the claimant was scheduled to work on February 23 and did not. The claimant did not work on February 23 because she had switched a shift with another employee and worked February 19 instead of February 23.

When the claimant did not report back to work after February 25, the employer considered her to have voluntarily quit her employment. The claimant did not report back to work because she assumed she had been discharged after her name had been crossed off the schedule and based on what Dains told her boyfriend.

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.

Since Beimer relied on records and Dains no longer works for the employer, the claimant's testimony as to the dates she worked, called in sick and the conversation she had with Dains must be given more weight than the employer's reliance on hearsay information from Dains. The evidence indicates the employer discharged the claimant by crossing her name off the schedule as of March 26. After the claimant saw her name crossed off, she reasonably relied on her boyfriend's information that Dains only wanted her to return to work just so she would sign the termination paperwork. While the claimant should have called to talk to the store director to verify she had been discharged, she did not. Her conclusion she had been discharged after seeing her name crossed off the scheduled was reasonable.

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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer's request for a doctor's statement on February 25 was not reasonable when the claimant had only missed one shift for illness and the policy states a doctor's note is needed when an employee misses two or more consecutive shifts. The fact the claimant questioned this directive when she had not missed two shifts was not out of line. The employer may have had business reasons for ending the claimant's employment, but the claimant did not commit work-connected misconduct. As of April 7, 2013, the claimant is qualified to receive benefits.

DECISION:

The representative's April 29, 2013 determination (reference 01) is reversed. The claimant did not voluntarily quit her employment. Instead, the employer discharged her for reasons that do not constitute work-connected misconduct. As of April 7, 2013, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css