

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REQUIA B BANKS

Claimant

APPEAL NO: 13A-UI-13792-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BLACK HAWK COUNTY

Employer

OC: 11//17/13

Claimant: Appellant (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's December 10, 2013 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated at the January 9 hearing. Angie Maus, a human resource generalist, and Michelle Pendleton, the claimant's supervisor, 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 employer discharge the claimant for reasons constituting work-connected misconduct or did the claimant voluntarily quit for reasons that do not qualify her to receive benefits?

FINDINGS OF FACT:

The claimant started working for the employer in January 2012. She worked as a full-time developmental aide. The employer's policy informs employees they are considered to have voluntarily quit if the employee does not call or report to work for three consecutive days.

During her employment, the claimant received several warnings for on-going attendance issues. In September 2013 the claimant requested arbitration concerning her continued employment. As of mid-November 2013, no arbitration date had been scheduled. On November 19, the claimant received a pre-termination notice. The employer gave the claimant this notice after she called on November 17 to report she was unable to work as scheduled. The on-duty supervisor told the claimant that this would be an unexcused absence because she did not have any paid time off to use. The November 19 pre-termination informed the claimant that her employment was being terminated pending the finding of arbitration. The November 19 notice also stated that the claimant was to continue working until arbitration findings were made or she had another attendance issue prior to arbitration.

When the employer gave the claimant the November 19 documentation, she indicated she would be absent on November 21 and 22 because she had a wake and funeral to go for her

finance's child. The employer has a bereavement policy and if the claimant would have talked to her supervisor, Pendleton, she could have received excused absences to attend these services. The claimant did not request bereavement leave.

After she received the November 19 pre-termination paperwork, the claimant indicated she did not feel well and left work early. On November 20, the claimant called the employer to report she was ill and unable to work. She did not call or report to work as scheduled on November 21, 22, and 23. As a result the claimant's failure to report to work these days, the employer sent her a November 22 letter asking her to attend a meeting on November 25. When the claimant appeared on November 25, the employer informed her she no longer had job.

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. On November 19, the claimant knew her job was in jeopardy if she had another attendance issue. The claimant told the employer she would be absent on November 21 and 22 to attend her finance's son's funeral. Instead of talking to her supervisor to have these absences excused and covered under bereavement leave, the claimant said nothing to her supervisor. The claimant did not call or report to work on November 23 because she assumed the employer had already discharged her. For unemployment insurance purposes, the employer initiated the employment separation and discharged the claimant. Since the claimant told the employer on November 19 she would not be at work on November 21 or 22, she did not fail to notify the employer for three days she would not be at work. The employer's three day no-call, no show policy does not apply to this case.

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 claimant incorrectly assumed she was discharged by November 23 because she was absent after she received the November 19 pre-termination paperwork. While her absences on November 19 through 22 would not disqualify her from receiving benefits, her failure to call or report to work on November 23 when she knew her job was in jeopardy amounts to an intentional and substantial disregard of the employer's interests. Based on her continuing attendance issues, the claimant committed work-connected misconduct when she did not call or report to work on November 23. As of November 17, the claimant is not qualified to receive benefits.

DECISION:

The representative's December 10, 2013 determination (reference 01) is affirmed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of November 17, 2013. 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