

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHIELA R LEPLEY
Claimant

APPEAL NO. 12A-UI-10391-SW

**ADMINISTRATIVE LAW JUDGE
DECISION**

CSOI CORP
Employer

**OC: 07/22/12
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated August 23, 2012, reference 01, that concluded she voluntarily quit her employment without good cause. An in-person hearing was held on October 10, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Christine Adams participated in the hearing on behalf of the employer. Exhibits One through Four were admitted into evidence at the hearing. The claimant was an employee shared by CSOI Corp and Danlee Corporation.

ISSUES:

Did the claimant voluntarily quit employment or was she discharged by the employer?
Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as an office assistant from May 2005 to July 24, 2012. She was originally hired to work part time, Monday through Thursday, about 26 hours per week. Christine Adams, the office manager, was the claimant's supervisor. She was given four vacation days and two floating holidays.

Before the claimant returned to work from maternity leave in May 2011, she requested that she only have to work three days a week. Adams agreed on the condition that the claimant would work one or two Fridays per month. The claimant agreed to this. Since she was working three days per week, she was allowed three vacation days per year and two floating holidays.

The claimant generally was scheduled three days per week, but there were times when the claimant requested days off and times the claimant was not able to work her scheduled days when she worked less than three days.

The claimant became upset at the end of the May 2012 when there were a couple of weeks when she was not scheduled three days. She told Adams that she would no longer work on Fridays, and if the employer scheduled her to work on Fridays, she would not report to work. She met again with Adams on June 6, 2012, and again said she would not work on Fridays.

Adams told the claimant that her schedule would have to be reduced because the employer would have to hire a new office employee.

The claimant continued to work until July 24, 2012, when Adams presented a letter to her that confirmed her work schedule was reduced and that she would no longer accrue any vacation or holiday pay. Adams asked the claimant to sign the letter. The claimant said she would not sign the letter because Adams was taking away her vacation days. Adams insisted that this was what they agreed to in June. The claimant said Adams could fire her, but she was not signing the letter. Adams said she would take it as the claimant's resignation. The claimant understood that her employment was terminated and left work.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992).

Adams said she would take the claimant's failure to sign the letter as her resignation. The claimant, however, never said she quitting. Not signing a letter is not the same thing as a resignation. Adams terminated the claimant because she would not sign the letter.

The issue then is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

I do not believe the claimant failing to sign the letter, which made a change in the claimant's terms of employment by not allowing her any vacation days, amounts to work-connected misconduct. Since previously the number of vacation days was keyed into the number of days per week she was scheduled to work, the claimant reasonably expected to be allowed at least two vacation days per year. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated August 23, 2012, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs