

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**DIXIE L HAYNES
1847 BROOKVILLE RD
FAIRFIELD IA 52556**

**J & B PLASTICS INC
2803 W GRIMES AVE
FAIRFIELD IA 52556**

**Appeal Number: 05A-UI-01012-AT
OC: 01-02-05 R: 03
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit
Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Dixie L. Haynes filed a timely appeal from an unemployment insurance decision dated January 27, 2005, reference 01, which disqualified her for benefits upon a finding that she had voluntarily left employment with J & B Plastics, Inc. without good cause attributable to the employer. After due notice was issued, a telephone hearing was held February 15, 2005, with Ms. Haynes participating. President Jay Silverman and Vice President Clark Plummer participated for the employer, J & B Plastics, Inc.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Dixie L. Haynes was employed by J & B Plastics, Inc. from May 13, 2002 until January 6, 2005. She was last classified a quality control operator. On January 6, 2005, Ms. Haynes returned to work from a workers' compensation injury with an unrestricted release from the treating physician. Despite the unrestricted release, Ms. Haynes told President Jay Silverman and Vice President Clark Plummer that she could not perform all of the duties of the position of quality control operator. She declined to return to work on the line to which she was assigned because she felt that the work was too strenuous. Quality control operators work on several lines and rotate regularly. Ms. Haynes did not provide any medical documentation contradicting the unrestricted release.

REASONING AND CONCLUSIONS OF LAW:

The question is whether Ms. Haynes' separation from employment was a disqualifying event. It was.

The parties agree that no words of separation were spoken. Ms. Haynes declined to return to work despite the unrestricted release. This refusal can be interpreted as a voluntary quit.

Iowa Code Section 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.

An individual who leaves work rather than perform assigned work as instructed is considered to have left employment without good cause attributable to the employer. See 871 IAC 24.25(27). Under some circumstances, an individual may receive unemployment insurance benefits if the individual resigns because of a medical condition. In order to receive benefits, however, the individual must present competent evidence establishing adequate health reasons. See 871 IAC 24.26(6)(b). The claimant did not do so. She presented only her subjective statement that she could not perform some of the quality control functions. Analyzing the separation as a quit, the administrative law judge concludes that benefits must be withheld.

The separation could also be analyzed as a discharge for refusing to perform assigned tasks.

Iowa Code Section 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Insubordination is one form of misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). In analyzing such a case, the administrative law judge must evaluate both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. See Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa App. 1985).

In light of the release provided by the claimant and the employer's practice of rotation, the administrative law judge concludes that the employer was reasonable in assigning Ms. Haynes as it did. Her refusal, unsubstantiated by any medical documentation and without any attempt to perform the tasks, was not reasonable. Analyzing the separation as a discharge, benefits again must be denied.

DECISION:

The unemployment insurance decision dated January 27, 2005, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

pjs/kjf