

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DARLENE M SUITER**

Claimant

**APPEAL NO. 09A-UI-04678-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**QUAD CITY SALVAGE AUCTION INC**

Employer

**Original Claim: 02/08/09  
Claimant: Respondent (1)**

Section 96.5-3-a – Refusal of Suitable Work

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Quad City Salvage Auction, Inc. (employer) appealed a representative's March 18, 2009 decision (reference 01) that concluded Darlene M. Suiter (claimant) was eligible to receive benefits as of February 8, 2009, even though she did not accept the employer's November 26 offer of work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 21, 2009. The claimant participated in the hearing. Samantha Frerichs, a human resource consultant, appeared on the employer's behalf.

The parties agreed that even though employment separation was not an issue noticed on the hearing notice, they would waive the notice requirement so the reasons for the claimant's employment separation could also be addressed in this hearing. 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:**

Did the claimant refuse an offer of work without good cause?

Did the claimant voluntarily quit her employment for reasons that do not qualify her to receive benefits, or did the employer discharge her for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in February 2008. When the claimant accepted the job, she accepted part-time employment. The claimant understood if the job developed into a full-time job, she would be the first person the employer offered the full-time employment. The claimant worked three days a week and nine hours a day until November 26, 2008.

On November 26, the employer asked the claimant to work full-time because her job had developed into a full-time position. The claimant agreed to work full time if she could work four, ten-hour days. The employer wanted and needed someone to work five days a week. Since the claimant would not work five days a week, the employer ended her employment.

The claimant did not establish a claim for benefits until the week of February 8, 2009.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if she refuses an offer of suitable work without good cause. Iowa Code § 96.5-3-a. Both the offer of work and the claimant's accompanying refusal must occur within the individual's benefit year before a refusal disqualification can be imposed. 871 IAC 24.24(8). The claimant did not establish a claim for benefits until the week of February 8, 2009. Therefore, if the employer's request for the claimant to work full-time instead of part-time is considered an offer of work, the claimant is not disqualified from receiving benefits. Why? Because she did not have an active unemployment insurance claim in late November 2008.

Since the claimant had been working for the employer three days a week, nine hours a day, and her employment ended on November 26, 2008, the reasons for her employment separation must be examined.

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. When the claimant accepted employment, she accepted a part-time job, but knew there was a possibility it could develop into a full-time job. When the claimant agreed to work for the employer, she informed the employer she was taking care of her father and was the family member who took him to all his appointments. On November 26, the employer asked the claimant to work full time, five days a week. The claimant agreed to work full time, but not five days a week. Instead, she agreed to work four, ten-hour days. The employer wanted and needed someone to work five days a week and ended her employment because the claimant would not work five days a week. For unemployment insurance purposes, the employer initiated the employment separation and discharged the claimant.

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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The facts do not establish the claimant committed work-connected misconduct. Instead, the employer ended her employment because she would not agree to change her hours from three, nine-hour days to five, eight-hour days. The claimant agreed to work full time but for four, ten-hour days. The employer would not agree to allow the claimant to work four days a week and

ended the claimant's employment on November 26, 2008, for declining to work five days a week. The employer established business reasons for discharging the claimant, but did not establish that she committed work-connected misconduct. As of February 8, 2009, the claimant is qualified to receive benefits.

**DECISION:**

The representative's March 18, 2009 decision (reference 01) is affirmed. The claimant is not disqualified for declining to change her employment from working three, nine-hour days to five, eight-hour days. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of February 8, 2009, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant. If the employer's November offer to work full-time falls under Iowa Code § 96.5-3-a, the claimant is not disqualified, because she did not have an unemployment insurance claim in November 2008.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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