

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

STEPHANIE A KOFRON
PO BOX 1071
MASON CITY IA 50402

AADG INC
CURRIES-GRAHAM
PO BOX 1648
MASON CITY IA 50402-1648

Appeal Number: 05A-UI-02830-SWT
OC: 02/13/05 R: 02
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 11, 2005, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on April 6, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. Jeff Neuwohner participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant worked full time for the employer as a production worker from May 18, 2004 to February 9, 2005. The claimant was informed and understood that under the employer's work rules, leaving work before the end of the shift without permission was prohibited. Her supervisor was Craig Kendrew.

On February 9, 2005, the claimant was scheduled to work from 3:00 p.m. to midnight. That evening, the claimant received a phone call from her live-in boyfriend's mother telling her that the police had executed a search warrant at her residence and needed to talk to her. The claimant decided that she had to leave to find out what was going on. At her lunch break, the claimant spoke to Kendrew and told him what had happened. She told him that she needed to leave and why. Kendrew told the claimant to "do what you have to do." He did not inform her that her job was in jeopardy if she left. The claimant left at approximately 8:00 p.m. She attempted to punch out, but because she was in an emotional state and in a hurry, the information was not inputted correctly. When the claimant left work, she had no intention of quitting her employment.

After the claimant left, she discovered that the police were searching her house for illegal drugs and had confiscated all of her electronic items for forfeiture. The claimant has a baby and had to go to her residence to put together things so she could stay with her mother that evening. She found out that she needed to talk to the police officers who executed the search warrant, and they would not be on duty until the time period that she was required to work the next day. The claimant properly called in before the start of her shift on February 10 and properly left a message for management stating that she needed to be off work and the reasons why. The claimant met with the police that evening to answer their questions and to find out what she needed to do to recover her property.

The claimant called in before the start of her shift on February 11 and spoke to the safety manager, Jeff Neuwohner. She expected to receive a three-day suspension for the time that she had missed. Neuwohner informed her that she no longer had a job because the employer considered her to have quit employment when she left work without punching out.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code sections 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). The claimant had no intention of quitting her employment when she left work on February 9, 2005. The separation from employment must be treated as a discharge. The discharge was because the claimant left work before the end of her shift without punching out.

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

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).

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 substantial and 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).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established in this case. Before the claimant left work on February 9, 2005, she sought and obtained permission from her supervisor to leave. Her supervisor did not inform her that her job would be in jeopardy if she left. The failure to punch out was not due to any deliberate misconduct on the claimant's part.

DECISION:

The unemployment insurance decision dated March 11, 2005, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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