

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACQUELYNN JAMES
Claimant

APPEAL NO: 07A-UI-00711-BT

**ADMINISTRATIVE LAW JUDGE
SECOND AMENDED DECISION**

PELLA REGIONAL HEALTH CENTER
Employer

**OC: 12/10/06 R: 03
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit
Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Pella Regional Health Center (employer) appealed an unemployment insurance decision dated January 9, 2007, reference 01, which held that Jacquelynn James (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 6, 2007. The claimant participated in the hearing. The employer participated through Ashley Arkema, Human Resources Specialist. 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:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a full-time certified nurse's aide on October 19, 2001 but subsequently went to part-time wherein she only worked weekends. She gave her notice to quit on December 1, 2006 with an effective date of December 22, 2006, but was discharged on December 15, 2006. The claimant appeared to have frustrations with her employer dating back to 2004. However, she testified that her view of the employer changed after her friend and co-worker was suspended and she decided she was not going to "take it anymore." Her friend was suspended as a result of an investigation relating to another co-worker's purse that was stolen in April 2006. The employer heard from employees that the claimant was allegedly stating that her friend admitted to stealing the purse and burning it. The employer relayed this information to the police who questioned the claimant on Saturday, November 25, 2006. The claimant denied making the statement and was upset that she was being questioned by the police. She called in ill the next day and gave her notice to quit on the following Friday.

After giving notice, there were complaints made about her performance by several co-workers and the claimant was discharged one week early on December 15, 2006. The co-workers reported the claimant was talking negatively about the employer and that she claimed she spit in a supervisor's drink. The employer did not make any determination with regard to whether or not the claimant actually did what she claimed but felt it was best for everyone if the claimant left. She was not questioned prior to being discharged.

The claimant filed a claim for unemployment insurance benefits effective December 10, 2006 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code sections 96.5-1.

Rule 871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. An employee quits her job when she intends to quit and carries out that intent by some overt act. Peck v. Employment Appeal Bd., 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). The claimant voluntarily gave her notice to quit on December 1, 2006 with her last day scheduled to be December 22, 2006. It is her burden to prove that her separation was for a good cause that would not disqualify her. Iowa Code section 96.6-2. She quit her employment after being questioned by the police about her friend's alleged involvement in the theft of a co-worker's purse. Although she had been upset with the employer over several incidents that occurred two years earlier, she admitted her view point of the employer changed after her friend was suspended. The claimant has not satisfied her burden to establish she quit with good cause attributable to the employer.

However, when an individual is discharged prior to an effective date of resignation, benefits are allowed from the last day worked until the effective date of the resignation, unless the claimant was discharged for work-connected misconduct. 871 IAC 24.25(38). The claimant was discharged one week prior to the effective date of her resignation due to complaints made about her by her co-workers.

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).

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 employer discharged the claimant based on hearsay statements made by her co-workers and without conducting a thorough investigation. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed for the one-week period ending December 23, 2006. Benefits are denied after that date.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated January 9, 2007, reference 01, is reversed. The claimant qualifies for unemployment insurance benefits for the one-week period ending December 23, 2006 because she was discharged without a showing of misconduct. She is disqualified as of December 30, 2006 due to her separation without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid \$260.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs/pjs/kjw