

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLY L PITTMAN
Claimant

APPEAL NO. 08A-UI-05846-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**GOODWILL INDUSTRIES OF THE
HEARTLAND**
Employer

**OC: 05/25/08 R: 04
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 17, 2008, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on July 10, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Toni Markiewicz participated in the hearing on behalf of the employer with witnesses, Jude Morgan and Kristy Johnson.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a store clerk from December 17, 2007, to May 28, 2008. Jude Morgan, the store manager, was the claimant's supervisor.

The claimant was scheduled to work on Saturday, May 24 and, Sunday, May 25. The claimant was seriously ill and called before the start of her shift on May 24 to inform the employer that she was unable to work and was going to the doctor. The claimant went to the doctor and her doctor took her off work until May 28. The claimant contacted Morgan and said that her doctor had excused her from working until May 28. The claimant had missed work the previous weekend due to legitimate medical reasons. Morgan was upset by the claimant's irregular attendance and expressed displeasure with her missing so much work in a raised voice. This bothered the claimant because her absences were due to matters beyond her control.

The claimant reported to work as scheduled on May 28, 2008, and provided Morgan with her doctor's excuse. Near the end of the claimant's shift, Morgan called the claimant into her office and presented a written reprimand for excessive absenteeism to sign. The claimant and Morgan engaged in an argument about whether it was unfair to discipline her for excused absenteeism. The claimant ended up grudgingly signing the discipline. Morgan also told the claimant she would be required to work the next weekend because she had missed work the previous weekends. The claimant expressed her disagreement with working on Saturday

because she was not scheduled to work and had other plans and told Morgan that she could not force her to work on a day she was not scheduled to work. Morgan told her that she had talked to human resources and that they could require her to work on the weekend.

At this point, the claimant's shift was over. As she walked to her locker, she told Morgan that she did not understand why Morgan was treating her this way. She also told Morgan that she did not appreciate being yelled at on the phone on the previous Saturday. Morgan angrily replied that the claimant was lying and that she did not yell. She told the claimant to get her stuff out of her locker and to not come back. The claimant reasonably believed Morgan had fired her and she left work.

Morgan discharged the claimant because the claimant argued with her about the discipline for absenteeism and asserted that Morgan had yelled at her, which Morgan found insolent.

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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe the claimant's testimony that Morgan told her to clean out her locker and leave. The claimant reasonably believed that she was discharged and the key question is whether she was discharged for work-connected misconduct.

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).

The claimant's conduct in questioning being written up for absences due to legitimate illness and being required to work on a day when she was not scheduled do not rise to the level of work-connected misconduct. I believe that Morgan did raise her voice when the claimant called in sick on May 24 so the claimant committed no misconduct in asserting that Morgan yelled at her. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated June 17, 2008, reference 01, is affirmed. 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/css