

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

JERRILYN FINCH  
595 N PLEASANT HILL #210  
DES MOINES IA 50327

MERCY HOSPITAL  
ATTN HUMAN RESOURCES  
1111 – 6<sup>TH</sup> AVE  
DES MOINES IA 50314

Appeal Number: 04A-UI-01519-RT  
OC: 01/11/04 R: 02  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting  
Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Jerrilyn Finch, filed a timely appeal from an unemployment insurance decision dated February 10, 2004, reference 02, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on March 4, 2004, with the claimant participating. Kelly Enyart, Employer Relations Coordinator, and Susan Johnson, Operations Director of Medical Imaging, participated in the hearing for the employer, Mercy Hospital. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. Employer's Exhibit One was admitted into evidence.

#### 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: The claimant was employed by the employer as a full-time time radiology communications secretary from March 20, 2001 until she separated from her employment on or about January 22, 2004. For the last year and one half the claimant had been a "float" worker, working in a variety of areas and for a variety of shifts. Most recently, prior to her separation, the claimant was supposed to start work at 7:00 a.m. and leave work at 3:30 p.m. However, some time shortly before her separation, the claimant changed her own schedule to arrive at 6:30 a.m. and leave at 3:00 p.m. She did this without authorization. The claimant changed her schedule because she started attending school and needed to change an hour to allow her to attend school. The claimant was not able, with the schooling, to work the hours that she had been scheduled and needed to work. On January 16, 2004, the claimant had a discussion with her supervisor, Monica Clarkson, about the change in her schedule. Ms. Clarkson admonished the claimant for changing her hours without approval and told the claimant that she needed to work her designated hours or "float" hours as needed. The claimant informed Ms. Clarkson that she was giving her notice. The claimant returned shortly thereafter and asked if she was being fired and Ms. Clarkson said no. The claimant was then absent on January 19, 2004 without notifying the employer. The claimant called Ms. Clarkson later that day and asked if the employer could accommodate her hours and was informed that the employer could not. The claimant then was absent from her job on January 20, 21, 22, 2004 without informing the employer. The claimant has never returned to the employer and offered to go back to work at her regular assigned hours. When the claimant was given the "float" position, the claimant was well aware that she would need to work as assigned and work a variety of jobs and a variety of shifts.

The employer has a rule in its handbook a copy of which the claimant received and for which she signed an acknowledgement indicating that an employee must call in two hours before that employee's shift starts if that employee is going to be absent or tardy and further provide that three absences as a no-call/no-show is considered a voluntary quit. When the claimant did not show up for work for three days, the employer terminated the claimant as a voluntary quit on January 22, 2004. The claimant was not informed that she was fired or discharged. The claimant never expressed any concerns to the employer about these matters nor did she ever indicate or announce an intention to quit. Work remained for the claimant had she shown up as scheduled.

The claimant had an attendance problem in the past receiving written warnings for her attendance on September 29, 2003; August 11, 2003; June 6, 2003; and January 22, 2003.

#### REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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.

871 IAC 24.25 provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer.

871 IAC 24.25(4), (18), (26), (28) provides:

- (4) The claimant was absent for three days without giving notice to employer in violation of company rule.
- (18) The claimant left because of a dislike of the shift worked.
- (26) The claimant left to go to school.
- (28) The claimant left after being reprimanded.

The first issue to be resolved is the character of the separation. The claimant maintains that she was discharged on January 16, 2004, when the employer refused to accept her rescheduled hours that the claimant had requested. The employer maintains that the claimant voluntarily quit when she was absent for three consecutive days without notifying the employer, January 20, 21, 22, 2004. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant left her employment voluntarily. The evidence establishes that the claimant was dissatisfied with the hours that she was working from 7:00 a.m. to 3:30 p.m. because she had enrolled in school and the hours conflicted with her school time. The claimant deliberately changed her schedule herself from 6:30 a.m. to 3:00 p.m. without authorization or permission. When the employer learned of this, her immediate supervisor, Monica Clarkson admonished the claimant on January 16, 2004, and told the claimant that she had to work her regular hours. For approximately one and one-half years, the claimant had been a "float" worker working at a variety of departments for a variety of shifts. The claimant was well aware that she needed to work as assigned when she was offered the float position and accepted it and worked that way for one year and one-half. However, the claimant enrolled in school and changed her hours herself without authority. The claimant was admonished for this by Ms. Clarkson and was told that she would have to work her assigned hours. At that time, the claimant even asked if she was discharged and she was informed that she was not, but that she needed to work her hours. The claimant was then absent on January 19, 2004, without notifying the employer in violation of the employer's policy. The claimant called sometime later in the morning and was again informed that she needed to work her hours as assigned. The claimant then failed to show up for work on and after January 20, 2004. The employer has a rule that provides that three consecutive absences without notifying the employer or as a no-call/no-show is considered a voluntary quit. The claimant had three such absences and the employer terminated her as a voluntary quit. The administrative law judge concludes that when the claimant was absent for those three consecutive days that she did in fact voluntarily leave her employment. Both parties

agreed that the claimant was never specifically told that she was fired or discharged. Both parties even seem to agree that the claimant was simply told she had to work her assigned hours, but the claimant was not prepared to do that. Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily. The issue then becomes whether the claimant left her employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that she has left her employment with the employer herein with good cause attributable to the employer. See Iowa Code Section 96.6-2. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. Even the claimant concedes that she had enrolled in school and this conflicted with her assigned hours. Leaving work voluntarily to go to school or because of a dislike of the shift work is not good cause attributable to the employer. There is evidence that the claimant was reprimanded for changing her own hours without authority, but leaving work voluntarily for a reprimand is also not good cause attributable to the employer. Finally, one who is absent for three days without giving notice to the employer in violation of the employer's rule is also not good cause attributable to the employer. There is insufficient evidence that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental or that she was subjected to a substantial change in her contract of hire. There is also no evidence that the claimant ever expressed any concerns to the employer about her working conditions or that she ever indicated or announced an intention to quit if any of her concerns were not addressed.

Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant left her employment voluntarily without good cause attributable to the employer and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

Even should the claimant's separation from employment be considered a discharge, the administrative law judge would conclude that the claimant was discharged for disqualifying misconduct and would still be disqualified to receive unemployment insurance benefits. The evidence establishes that the claimant had a serious attendance problem receiving four written warnings in 2003 and then being absent on January 19, 2004 and being absent from and after January 19, 2004 without properly notifying the employer. The administrative law judge would conclude that these absences were not for reasonable cause and not properly reported and were excessive unexcused absenteeism and disqualifying misconduct. See 871 IAC 24.32(7). Further, the administrative law judge would conclude that the claimant's deliberately changing her scheduled hours without permission when she knew what her scheduled hours were and knew that she was expected to work those scheduled hours and refusing to return to her regularly scheduled hours is a deliberate acts or omission constituting a material breach of her duties and obligations arising out of her worker's contract of employment and evinces a willful or wanton disregard of the employer's interests and is also disqualifying misconduct. See 871 IAC 24.32(1). Therefore, even should the claimant's separation be considered discharge, the administrative law judge would conclude that the claimant was discharged for disqualifying misconduct and would still be disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

DECISION:

The representative's decision of February 10, 2004, reference 02, is affirmed. The claimant, Jerrilyn Finch, is not entitled to receive unemployment insurance benefits until or unless she requalifies for such benefits.

kjf/b