

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TIFFANY L HEIN**  
Claimant

**GRAPETREE MEDICAL STAFFING INC**  
Employer

**APPEAL 18A-UI-08906-LJ-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 07/29/18**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 13, 2018, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for failure to follow instructions in performing her job. The parties were properly notified of the hearing. A telephonic hearing was held on September 18, 2018. The claimant, Tiffany L. Hein, participated. The employer, Grapetree Medical Staffing, Inc., participated through Abbey Brophy, HR Specialist. Claimant's Exhibits A and B and Employer's Exhibit 1 were received and admitted into the record without objection.

**ISSUE:**

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time, most recently as a certified nursing assistant, from August 18, 2016, until July 19, 2018, when she was discharged. During claimant's employment, she was asked not to return to a certain facility. Because of this, the employer asked claimant to write a written statement explaining her side of the story regarding the facility. On July 16, Human Resources Specialist Gidget Wingad sent claimant an email stating she needed to provide the written statement by July 18 at 3:00 p.m. (Exhibit 1) This email states, "If no written statement is received or communication about the process by this timeframe, the non-response will be interpreted as a voluntary quit." Wingad also left claimant a voicemail message communicating this assignment and deadline. (Exhibit 1) Following the voicemail message, claimant spoke to Wingad and was reminded of the assignment. Claimant did not submit her written statement by July 18 at 3:00 p.m. Claimant was dealing with personal health issues and an internet outage at her home, both of which contributed to her missing the deadline. Claimant has been required to provide written statements of a similar nature in the past, and in June 2018 she was required to

abide by a two-day deadline. In that situation, claimant requested an extension before the deadline had passed and the employer granted her an extension.

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

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for disqualifying misconduct. Benefits are withheld.

Iowa Code §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.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. The burden of proof rests with the employer to show that the claimant voluntarily left the employment. *Irving v. Empl. App. Bd.*, 15-0104, 2016 WL 3125854, (Iowa June 3, 2016). A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). It requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). Where there is no expressed intention or act to sever the relationship, the case must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

In this case, the employer has not met its burden of proving that claimant voluntarily quit her employment. It appears from the evidence in the record that the employer, not claimant, ended the employment relationship. Therefore, this case will be analyzed as a discharge from employment and the employer bears the burden of establishing disqualifying misconduct.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

In insubordination cases, the reasonableness of the employer's demand in light of the circumstances must be evaluated, along with the worker's reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985). The key to such cases is not the worker's subjective point of view but "what a reasonable person would have believed under the circumstances." *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330, 337 (Iowa 1988); *accord O'Brien v. EAB*, 494 N.W.2d 660 (Iowa 1993)(objective good faith is test in quits for good cause). For example, in *Green v. IDJS*, 299 N.W.2d 651 (Iowa 1980) an employee refused to sign a warning to acknowledge that she understood why she was being warned. The Court found the refusal to be disqualifying as a matter of law, and did not focus on whether the warning was justified or not. *Green* at 655. The claimant's actions in refusing to do as told "show[ed] an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer." 871 IAC 24.32(1)(a).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's testimony and documentation more credible than claimant's testimony. The administrative law judge believes that claimant was told and understood that the deadline for her written statement was July 18 at 3:00 p.m.

The employer is entitled to establish reasonable work rules and expect employees to abide by them. Here, claimant was discharged for failing to submit a written statement by the deadline. Allowing two days for claimant to supply the written statement was reasonable. Claimant did not ask for an extension prior to the deadline, and she did not provide any reasonable explanation for missing the deadline. The employer has met its burden of proving that claimant was discharged for disqualifying misconduct. Benefits are withheld.

**DECISION:**

The August 13, 2018, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

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