

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

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GASTROENTEROLOGY ASSOCIATES PC  
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BETTENDORF IA 52722-7546

Appeal Number: 05A-UI-06495-DT  
OC: 05/29/05 R: 04  
Claimant: Respondent (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, 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 Leaving  
Section 96.5-2-a – Discharge  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Gastroenterology Associates, P.C. (employer) appealed a representative's June 16, 2005 decision (reference 01) that concluded Kristin Hawotte (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 11, 2005. The claimant participated in the hearing. Cindy Bell appeared on the employer's behalf and presented testimony from one other witness, Retha Bender. 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:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 13, 2003. She worked full time as a medical records clerk in the employer's clinic and surgical center; she primarily worked a 6:30 a.m. to 3:00 p.m. Monday through Friday schedule. Her last day of work was June 2, 2005.

On June 2, 2005, Ms. Bell, the office administrator, called the claimant in for a meeting with other records staff and Ms. Bender, the team leader. The reason for the meeting was to explain that a part-time student assistant in the medical records division who had worked a 2:00 p.m. to 5:00 p.m. shift was transferring to another position in the office, and to make arrangements to cover the duties in the division. Ms. Bell informed the claimant that beginning as soon as possible, presumably by Monday, June 6, she expected the claimant to work from 8:00 a.m. to 4:30 a.m. to cover the later part of the workday that had previously been covered primarily by the student assistant.

The claimant asked if the subject was open for discussion, and was told it was not. Ms. Bell attempted to tell the claimant that it would only be temporary until another part-time assistant could be found. However, the claimant got up and began to leave the room. Ms. Bell told the claimant to sit down and continue with the meeting. The claimant refused, and continued to leave. Ms. Bell called after the claimant to stay and sit down, and told the claimant that if she left the meeting, she would be deemed to have voluntarily quit. The claimant continued to leave, closing the door behind her. Ms. Bell asked Ms. Bender to go after the claimant and tell her to return to the meeting or leave the premises, which Ms. Bell did. The claimant was on the phone when Ms. Bender came by; after getting off the phone, the claimant gathered her belongings and left. The claimant's phone call was to cancel childcare arrangements she had made for her child for the summer, which would have necessitated the claimant be able to pick her child up each day by 4:00 p.m.

The claimant established a claim for unemployment insurance benefits effective May 29, 2005. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$1,380.00.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

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 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. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant asserted that rather than saying that she would be considered to have quit if she left the meeting room, that as she was closing the door to the meeting room Ms. Bell had stated, "then, you're fired," and that when Ms. Bender came by her desk, she did not say to return to the meeting or leave the building, but that she was to go back to talk to Ms. Bell before she left the building. The administrative law judge finds the employer's corroborated testimony more credible. The claimant did exhibit the intent to quit and did act to carry it out by refusing to report for work as directed. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. Leaving rather than performing assigned work as instructed, including sitting down for a meeting, is not good cause. 871 IAC 24.25(27). The law presumes a claimant has voluntarily quit with good cause when she quits because of a substantial change in the contract of hire. 871 IAC 24.26(1). However, the temporary modification of the claimant's work schedule that was being imposed was only a minor change in her routine and did not constitute a change in her contract of hire. Id. Further, in order for a reason for a quit to be attributable to the employer, an individual who voluntarily leaves their employment must first give notice to the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. Swanson v. Employment Appeal Board, 554 N.W.2d 294 (Iowa 1996), Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). The claimant did not provide this notice and opportunity to the employer. The claimant has not satisfied her burden. Benefits are denied.

In the alternative, even accepting the claimant's assertion that she was told she was "fired" and analyzing the separation as a discharge, the result is the same. The issue in this case would be whether the employer discharged the claimant for reasons establishing work-connected misconduct. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

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 claimant's refusing to sit down and return to the meeting after she was specifically instructed to do so shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Treated as a discharge, the employer discharged the claimant for reasons amounting to work-connected misconduct.

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 representative's June 16, 2005 decision (reference 01) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. In the alternative, she was discharged for misconduct. As of May 29, 2005, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,380.00.

ld/sc