

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BONNIE S SLOAN
Claimant

WESLEYLIFE
Employer

APPEAL NO. 14A-UI-09378-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/10/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated August 27, 2014, reference 01, that concluded the claimant voluntarily quit employment with good cause attributable to the employer. A telephone hearing was held on October 3, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Michael Sloan. Jennifer Groenwold participated in the hearing on behalf of the employer with witnesses, Nicole Wallace, Nancy McKasson, and Robyn Witte. Exhibits One and Two were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a certified nursing assistant (CNA) from October 15, 2012, to November 21, 2013. The facility is in Indianola, and the claimant lives in Des Moines, Iowa, about 20 miles away.

The claimant was off work due to medical issues after November 21, 2013, that were causing her to frequently black out. She was hospitalized for testing and ultimately was diagnosed with severe sleep apnea. A CPAP machine was prescribed in mid-December. In November and December, 2013, the claimant was in contact with the director of nursing, Robyn Witte, regarding her inability to work. The claimant had sick leave and vacation to cover her time off through December 19.

The claimant was informed and understood that she was required to submit a Family and Medical Leave Act (FMLA) application, including certification by her physician that she was unable to work. The employer provide the documents for FMLA approval. The documents were mailed on November 27 and December 5. The original due date for the documents was December 20.

When the employer had not received the FMLA documents by December 31, 2013, the human resources director, Kaylee Siebert, mailed a letter to the claimant stating the employer had not received the FMLA certification from her doctor. In the letter, Siebert informed her that her job was in jeopardy unless she contacted Witte or the office manager, Nancy McKasson, or submitted the FMLA certification by January 7, 2014.

The claimant moved around January 1, 2014, and she did not receive Siebert's letter. Sometime in early January 2014, the claimant brought the completed medical certification taking her off work through January 17 and left it with the front desk person for Witte. For some reason, Witte never received the documents.

The claimant was released by her doctor to work effective January 18, 2014. She called the facility and asked for Witte, but she was not available. She left messages for Witte offering to return to work but received no return calls.

On January 21, 2014, Siebert sent a letter to the claimant that she was terminated because of her extended absence since November, her failure to turn in her FMLA paperwork, and lack of contact with the employer. The claimant never received this letter as it was addressed to her old address and was returned undeliverable.

REASONING AND CONCLUSIONS OF LAW:

The 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. 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. This is a difficult case because the claimant's testimony was credible about what happened to her, including going in on a Saturday in January to deliver her FMLA paperwork and calling later to let Witte know that she had been released to return to work. On the other hand, it is difficult to understand how Witte would not know about the claimant leaving FMLA paperwork or the voice mails the claimant had left for her stating she was released to return to work. The case then is resolved by the burden of proof. I conclude that the employer has not proven by a preponderance of the evidence that the claimant voluntarily quit employment without good cause or that she was discharged for misconduct. Since the claimant brought in the FMLA papers and called the employer to return to work, she has not committed willful and substantial misconduct. In addition, a claimant is qualified to receive benefits if she left employment because of illness, injury or pregnancy with the advice of a licensed and practicing physician and notice to the employer and offered to return to work for the employer when recovery was certified by a physician but work was not available. Iowa Code § 96.5-1-d. The claimant also satisfied these requirements.

DECISION:

The unemployment insurance decision dated August 27, 2014, 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