

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELA R GAYNOR
Claimant

APPEAL NO. 08A-UI-10277-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 10/05/08 R: 01
Claimant: Appellant (4)

Section 96-5-1 – Voluntary Quit
Section 96-5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Angela Gaynor filed an appeal from a representative's decision dated October 27, 2008, reference 01, which denied benefits based upon her separation from Care Initiatives. After due notice was issued, a hearing was held by telephone on November 18, 2008. Ms. Gaynor participated personally. The employer participated by Lynn Corbeil, attorney at law, and witnesses Angie Campbell, director of nursing, Jack Studer, administrator, and Julie Smith, nurse manager.

ISSUES:

Whether the claimant quit employment with good cause attributable to the employer

Whether the claimant was discharged for misconduct in connection with her work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from March 21, 2007, until October 3, 2008, when she provided two weeks' notice of her intention to quit employment, and her resignation was accepted that day. Ms. Gaynor was employed as a full-time certified nursing assistant and was paid by the hour. Her immediate supervisor was Angie Campbell.

Ms. Gaynor tendered her notice of intention to resign on or about October 3, 2008, because of general dissatisfaction with coworkers. The claimant had been dissatisfied because of personal remarks attributed to some coworkers by others regarding time that the claimant had taken away from work. Other workers had complained about smoking breaks and related matters. In an effort to resolve the dissatisfactions, the employer had scheduled a special meeting on October 2, 2008. However, the claimant did not remain through the entirety of the meeting and left early. The claimant submitted a two-week notice of intention to leave her employment. The employer, for business reasons, informed Ms. Gaynor on October 3, 2008, that they would accept the two-week notice period effective that day.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment with Care Initiatives without good cause attributable to the employer but was discharged for no disqualifying reason prior to the intended resignation date.

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.

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.

871 IAC 24.25(38) 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:

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

The claimant's decision to leave because of general dissatisfaction with personal comments attributed to other workers was not a good-cause reason attributable to the employer. However, since the employer terminated the employment relationship in advance of the resignation notice effective date, the claimant is entitled to benefits from the date of the termination on October 3, 2008, until the effective of the proposed resignation, October 14, 2008.

DECISION:

The October 27, 2008, reference 01, decision is affirmed as modified. The claimant voluntarily left employment without good cause attributable to the employer but was discharged prior to the resignation effective date. Benefits are allowed until October 14, 2008. Thereafter, benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw