

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARMAN L RICHERS
Claimant

APPEAL NO: 10A-UI-16263-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAYLAND MENNONITE HOME ASSN
Employer

OC: 10/10/10

Claimant: Respondent (1)

871 IAC 24.1(113)a – Layoff

STATEMENT OF THE CASE:

Wayland Mennonite Home Association (employer) appealed a representative's November 18, 2010 decision (reference 01) that concluded Carman L. Richers (claimant) was qualified to receive unemployment insurance benefits in conjunction with her employment with the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 12, 2011. The claimant participated in the hearing. Bill Grimm appeared on the employer's behalf and presented testimony from two other witnesses, Teresa Hunt and Linda Hagist. 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 4, 2010. She worked part time (20 - 30 hours per week) as a certified nursing aide (CNA) in the employer's continuing care/retirement center. She typically worked evening shifts, usually from 2:00 p.m. to 10:00 p.m.; the days varied, and were somewhat dependent upon her school schedule. The last day she worked was September 20, 2010.

The claimant was scheduled to work on September 25, but called in sick, later providing a doctor's note. On September 27 Ms. Hagist called the claimant to attempt to schedule her to work a make-up shift on October 2 or October 3. The claimant responded that she could not as she had already arranged to be unscheduled that weekend due to being in a wedding.

On September 29 the claimant was scheduled to work from 3:00 p.m. to 9:00 p.m. Shortly after 8:00 a.m. Ms. Hunt, the director of nursing, called and left a message for the claimant indicating that they needed to discuss the claimant working a shift that weekend to make up the weekend shift she had missed on September 25, or there would be a problem. The claimant was disturbed by the tone of the message, and allowed her boyfriend to hear it. Unknown to the claimant, her boyfriend then made a contact with Ms. Hunt in which he expressed his

displeasure with Ms. Hunt's tone to the claimant. The claimant did have direct contact with Ms. Hunt by phone at about 9:30 a.m., at which point Ms. Hunt told the claimant that she was being taken off the schedule until such time as there was a meeting held with Mr. Grimm, the administrator, to address the claimant's attendance. Ms. Hunt was not planning that the potential meeting would be to discharge the claimant.

The claimant did attempt to reach Mr. Grimm, and spoke to him by phone on October 3. He was unable to arrange a meeting time at that point, and advised her to call again on October 4. The claimant did call him again on October 4, but Mr. Grimm was not available when she called. The claimant believed the employer would attempt to recontact her to follow up on scheduling the meeting, but the employer was expecting the claimant to pursue the matter until such meeting was arranged and held.

REASONING AND CONCLUSIONS OF LAW:

A separation is disqualifying if it is a voluntary quit without good cause attributable to the employer or if it is a discharge for work-connected misconduct.

871 IAC 24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

The employer did not discharge the claimant, and the claimant did not quit. The employer initiated the separation by removing the claimant from the schedule for what was supposed to be a short period of time. Particularly after the claimant made the last two contacts to the employer to seek to schedule the meeting, it was the employer's obligation, not the claimant's, to follow up with the claimant to schedule the meeting and for practical purposes recall the claimant to work after an effective layoff. 871 IAC 24.24. The separation between the claimant and the employer was a layoff by the employer due to the employer's removal of the claimant from the schedule; the employer had no work it was willing to provide to the claimant at that time, but it has not recalled the claimant to arrange bringing her back to work. As there was not a disqualifying separation, benefits are allowed if the claimant is otherwise eligible.

DECISION:

The representative's November 18, 2010 decision (reference 01) is affirmed. The claimant was laid off from the employer as of September 29, 2010 due being removed from the schedule by

the employer pending resolution of an issue the employer did not resolve. Benefits are allowed, provided the claimant is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css