

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LUNYE L SMITH
Claimant

APPEAL NO: 13A-UI-11316-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

NATIONAL EMPLOYMENT SERVICE CORP
Employer

OC: 08/18/13
Claimant: Appellant (2-R)

Section 96.5-2-a – Discharge
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant appealed a department decision dated September 20, 2013, reference 02, that held she voluntarily quit employment without good cause attributable to the employer on August 8, 2013, and benefits are denied. A telephone hearing was scheduled and held on October 31, 2013. The claimant participated. The employer did not participate.

ISSUE:

The issue is whether the claimant voluntarily quit with good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant worked for the employer as a full-time picker from April 1, 2013 to August 8. The claimant asked the employer for time-off due to her father's death. The employer granted claimant's request and it did not set a specific date for her return to work other than an instruction claimant let it know.

Claimant developed a health problem that was not due to a work-related injury. She saw a doctor the morning of August 8 due to a swollen face. Claimant went to the plant facility after the doctor appointment and she could not enter as her access card had been de-activated. She understood the employer preventing her access meant she was terminated.

Claimant was advised to seek mental health treatment and she had an appointment with a psychiatrist on September 17 with a follow-up appointment. The department issued claimant a work search warning decision on September 17 about failing to make two in-person job contacts for the week ending September 14. Claimant did not appeal.

The employer failed to respond to the hearing notice with the name(s) and phone number to be called for the hearing. The department record system does not show a call from the employer to UI Appeals requesting to be called for the hearing (APLT).

REASONING AND CONCLUSIONS OF LAW:

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.

The administrative law judge concludes employer failed to establish claimant was discharged for misconduct on August 16, 2013. The employer failed to participate in this matter and offer evidence of job disqualifying misconduct.

Although claimant left her work due to her father's death on August 8, the employer agreed to a leave from work for that reason. Since claimant tried to return to work and her access was denied, she reasonably assumed she had been terminated.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge further concludes there is an issue whether claimant was able, available for work and actively seeking work due to health issues on and after August 18. This issue is remanded to claims for fact finding.

DECISION:

The department decision dated September 20, 2013, reference 02, is reversed. The claimant was not discharged for misconduct on August 16, 2013. Benefits are allowed, provided the claimant is otherwise eligible. The issue whether claimant meets the availability requirements of the law is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs