

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

YEEKIANNA TWYMAN
Claimant

APPEAL NO. 14A-UI-02823-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

OC: 02/09/14
Claimant: Respondent (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct
Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Team Staffing Solutions, Inc. (employer) appealed an unemployment insurance decision dated March 3, 2014, (reference 01), which held that Yeekianna Twyman (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 4, 2014. The claimant participated in the hearing. The employer participated through Sarah Fiedler, Human Resources Generalist.

ISSUES:

The issues are whether the claimant is disqualified for benefits, whether she was overpaid unemployment insurance benefits, whether she is responsible for repaying the overpayment and whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked as a full-time production worker assigned to Winegard from August 2, 2010, through February 13, 2014, when she was dismissed from the assignment without completing it. On February 10, 2014, she had a verbal altercation with a co-worker regarding an outside issue and both employees were warned that if it happened again, they would be dismissed. The employer determined the claimant had another verbal altercation with the same co-employee on February 13, 2014, and she was removed from the assignment. The employer considers the claimant voluntarily terminated her position due to repeating the prohibited conduct. The claimant signed a previous written warning on July 18, 2014, for inappropriate conduct, foul language and use of racial slurs. She does not remember signing the warning.

The claimant contends she was discharged on February 12, 2014, and denies that there were any further problems after February 10, 2014. She does not understand why she was removed from the assignment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer or if the employer discharged her for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant did not exhibit the intent to quit and did not act to carry it out. Since the claimant did not have the requisite intent necessary to sever the employment relationship so as to treat the separation as a "voluntary quit" for unemployment insurance purposes, it must be treated as a discharge.

The issue is whether the employer discharged the claimant for work-connected misconduct. 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. 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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on February 13, 2014, for a second verbal altercation with a co-worker. She admits she received a warning about the altercation that occurred on February 10, 2014, but denies there were any more incidents after that. The employer could only provide hearsay testimony that a second confrontation occurred. Hearsay testimony is admissible in hearings of this nature. Iowa Code § 17A.14(1) (2011). However, the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. Consequently, the employer has not carried its burden of proof to establish disqualifying misconduct. Benefits are allowed.

DECISION:

The unemployment insurance decision dated March 3, 2014, (reference 01), is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css