

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHARDONNA M TENEYCK
Claimant

APPEAL NO. 08A-UI-10810-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY HOSPITAL
Employer

**OC: 01/01/08 R: 02
Claimant: Appellant (5)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated November 5, 2008, reference 03, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on December 4, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Patti Steelman participated in the hearing on behalf of the employer with witnesses, Bonny McCoy and Kendra Buchanan. Exhibit One was admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time as a patient care technician for the employer from October 20, 2006, to June 16, 2008. She was arrested on July 1, 2008, and charged with robbery and kidnapping for an incident that happened on June 15. The incident happened while the claimant was off-duty.

The claimant was lodged in jail as a result of the criminal charge from July 1, 2008, to September 4, 2008. Before she was arrested and jailed, she had obtained paperwork to apply for leave under the Family and Medical Leave Act (FMLA) due to mental health problems she was experiencing at the time. Her FMLA request was denied because she failed to submit a medical statement certifying that she was unable to work. The claimant had given the medical certification forms to her doctor and believed the doctor had completed them and sent them to the employer. She also had tried calling the employer while she was in jail, but no one would accept her collect calls. She was suspended on July 9, effective June 16, 2008, due to the criminal charges against her.

On July 29, 2008, the employer terminated the claimant's employment because she was in jail due to her arrest for kidnapping and robbery and the employer decided it could not hold her job open any more. The claimant pled guilty to felony conspiracy charges relating to the kidnapping and robbery charges.

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. Although the Agency disqualified the claimant under the rule (871 IAC 24.25(16)) that states persons who leave employment because they have been incarcerated are presumed to have left employment without good cause attributable to the employer), this is a only a presumption and can be rebutted by evidence to the contrary. I do not believe the claimant intended to quit her employment when she became incarcerated, and the employer in fact terminated her.

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant ended up pleading guilty to conspiracy in regard to her actions on June 15. Her action on that date led to her being unable to work for an extended period of time. Her unemployment was caused by her criminal conduct. It was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated November 5, 2008, reference 03, is modified with no change in the outcome. The claimant was discharged for work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw