

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THERESA A GEHRKE
Claimant

APPEAL NO. 11A-UI-10075-A

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHARLES W POPE
LINCO ENTERPRISES
Employer

OC: 04/17/11
Claimant: Respondent (5)

Section 96.5-2 – Discharge
Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Linco Enterprises filed a timely appeal from an unemployment insurance decision dated July 20, 2011, reference 03, that allowed benefits to Theresa A. Gehrke. After due notice was issued, a hearing was held in Cedar Rapids, Iowa on October 26, 2011 with Ms. Gehrke participating and being represented by Larry J. Thorson, Attorney at Law. Exhibit A was admitted into evidence on her behalf. The employer did not respond to the hearing notice.

ISSUE:

Was the claimant's separation from employment a disqualifying event?

FINDINGS OF FACT:

Theresa A. Gehrke was hired by Linco Enterprises on January 15, 2007. She last worked on January 28, 2011. She was injured off work. On February 28, 2011, the employer hired a replacement for Ms. Gehrke. When Ms. Gehrke attempted to return to work on May 17, 2011, owner, Charles W. Pope, threatened to have her arrested. On June 14, 2011, Ms. Gehrke learned that the receptionist hired in February had been made a permanent employee.

REASONING AND CONCLUSIONS OF LAW:

An individual is disqualified for unemployment insurance benefits if the individual either has left work voluntarily without good cause attributable to the employer or has been discharged for misconduct. See Iowa Code § 96.5-1 and 96.5-2-a, respectively. In order to find a voluntary quit, the evidence must establish that the individual desired to end the employment relationship. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). There is no evidence in this record that Ms. Gehrke desired to end her employment with Linco Enterprises.

The evidence in the record establishes that the employer replaced Ms. Gehrke while she was absent due to a medical condition. While the employer was free to do so, disqualification is appropriate only for benefits if the claimant was replaced because of misconduct in connection

with the employment. The administrative law judge finds no evidence of misconduct. From the evidence in this record, the administrative law judge concludes that no disqualification may be imposed.

DECISION:

The unemployment insurance decision dated July 20, 2011, reference 03, is modified. The claimant did not voluntarily leave employment. She was replaced while absent due to a medical condition of which the employer was aware. She is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs