

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALICE G HANSEN**  
Claimant

**APPEAL NO: 10A-UI-04504-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA STATE UNIVERSITY**  
Employer

**OC: 01/24/10**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge  
Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

Iowa State University (employer) appealed a representative's March 19, 2010 decision (reference 01) that concluded Alice G. Hansen (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 10, 2010. The claimant participated in the hearing and was represented by Katie Naset, attorney at law. Greg Bolles appeared on the employer's behalf. 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 July 13, 2009. She worked full time as a human services specialist in the employer's human development and family studies department. Her primary function was to oversee a home and community based services contract the employer had been granted by the State Department of Administrative Services (DAS) under Medicaid. Her last day of work was December 14, 2009, although she was paid through January 29, 2010.

On December 14 the claimant's supervisor informed the claimant that DAS had provided the employer with an ultimatum that either the claimant be removed from her position or the contract would be withdrawn, resulting in the loss of employment for all of the employer's employees who worked on the contract. The issue was apparently a concern over various reports that DAS had expected the claimant to be providing, but for which the claimant had not been providing with the necessary resources. The claimant's supervisor explained that he did not wish to discharge her, that it would be better if she resigned, so the claimant submitted her resignation to him that day.

## REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a

871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did not have the intent to sever the employment relationship necessary to treat the separation as a "voluntary quit" for unemployment insurance purposes; she did not have the option to continue her employment; she could either quit or be discharged. 871 IAC 24.26(21). As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance.

The next issue in this case is then whether the employer effectively discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). 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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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 to be deemed misconduct within the meaning of the statute. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason the employer effectively discharged the claimant was essentially unsatisfactory job performance. Misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. Huntoon, supra. There is no evidence the claimant intentionally failed to perform her duties to the best of her abilities. The claimant's actions that led to the loss of her

job were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's March 19, 2010 decision (reference 01) is affirmed. The claimant did not voluntarily quit and the employer did effectively discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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