

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

CARLA J O'HEARN
73828 – 607TH
ELLIOTT IA 51532

PELLETT PETROLEUM CO INC
603 W 2ND ST
ATLANTIC IA 50022

Appeal Number: 04A-UI-07214-SWT
OC: 06/06/04 R: 01
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 24, 2004, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on July 27, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Garry Pellett participated in the hearing on behalf of the employer. Exhibits One and A were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as a bookkeeper and dispatcher from September 14, 1998 to April 20, 2004. Garry Pellett, the general manager, was the claimant's supervisor.

On April 2, 2004, the claimant had a doctor's appointment regarding a severe skin irritation condition. The doctor and the claimant discussed having the claimant work from home to determine whether the work environment was causing the skin irritation. The doctor prepared a note, which the claimant gave to Pellett on April 5, 2004, in which the doctor recommended that the claimant be away from the work environment for a period of time to see if her condition improved.

Pellett agreed that the claimant could work from home for two weeks but explained that it would be difficult to allow her to work from home beyond two weeks. The claimant worked from home from April 6 through April 19, 2004. On April 19, 2004, the claimant again had a doctor's appointment. The doctor recommended that the claimant continue to work from home for one month and referred the claimant to a dermatologist. The doctor faxed the employer a statement that diagnosed the claimant's condition as dermatitis worsened by environmental factors and stated that the claimant should continue to work at home for one month.

On April 20, 2004, Pellett told the claimant that working at home was not working out and she was required to e-mail what she had done and bring in the rest of her work for someone else to do. Pellett asked the claimant about working from the main office, which had less potential exposure to irritants. The claimant told Pellett that she would check with her doctors.

On April 20, 2004, a dermatologist examined the claimant. She told the claimant that she believed the skin irritation was related to her work. The dermatologist prescribed some medication and scheduled her for another appointment in two weeks.

On April 23, 2004, Pellett sent the claimant a letter stating that he had arranged a new work environment in a different building to comply with the doctor's request and provide her with access to the resources required for her to accomplish her assigned tasks. The letter notified the claimant that Pellett expected the claimant to return to work on the next workday following her receipt of the letter or for her to contact Pellett personally on that day to discuss her intentions regarding her return to work.

The claimant received the letter on April 26, 2004. She followed the employer's instructions and attempted to call Pellett at work. Pellett was not at work, so the claimant called Pellette on his cellular phone. Pellette was not available to take the call. The claimant left a message on Pellett's voice mail stating that she was working with several doctors and would be consulting with them about her options. She said that Pellett would be receiving a fax that day regarding the doctors' recommendations. Pellett received a fax from the claimant's doctor stating: "I recommend she not be in an environment where industrial irritants may be present i.e. I recommend she work at home by computer if possible." The claimant believed that she had complied with Pellett's letter.

After April 27, 2004, the claimant kept in contact with the workers' compensation case manager and was assured that her contacts and her doctor's statements would be sufficient contacts with the employer and the case manager would keep the employer informed. On May 7, 2004, the dermatologist excused the claimant from working until workplace testing by an industrial hygienist was completed. The excuse was provided to the case manager and forwarded to Pellett.

On May 21, 2004, Pellett sent the claimant a letter stating that since the claimant knew that working at home was not possible, she was expected to report to work on April 28 or contact

him about what her work schedule would be. He stated that since she had not contacted Pellett by April 30, 2004, her employment was terminated due to job abandonment.

The claimant received the letter on May 24, 2004, and replied asserting that she had not abandoned her job and explained her actions. Pellett sent a response letter on June 11, 2004, reiterating the employer's position that the claimant had abandoned her job.

The claimant never intended to quit her job and was following the recommendations of her physicians. She believed that she had complied with the employer's requirements.

The claimant filed a new claim for unemployment insurance benefits with an effective date of June 6, 2004. The employer has not offered the claimant any work since the claimant filed her claim for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code Sections 96.5-1 and 96.5-2-a. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992). The evidence fails to establish any intention on the part of the claimant to quit her job. The employer terminated the claimant's employment in the letter dated May 21, 2004.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

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. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such 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. On the other hand 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established in this case. The claimant was absent from work in compliance with her doctors' orders, and the claimant maintained contact with the employer or the employer's agents up to the date that the employer terminated her. As of the date that the employer terminated the claimant, her doctor had taken her off work pending the results of workplace testing.

DECISION:

The unemployment insurance decision dated June 24, 2004, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/kjf