

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

HEATHER J TAYLOR
PO BOX 1965
AMES IA 50010

DISTEK INTEGRATION
PO BOX 300
CARTHAGE IL 62321

ROBERT DIETER
ATTORNEY AT LAW
PO BOX 627
CEDAR FALLS IA 50613

Appeal Number: 05A-UI-06523-DWT
OC: 05/15/05 R: 03
Claimant: Appellant (5)

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:

Heather J. Taylor (claimant) appealed a representative's June 9, 2005 decision (reference 02) that concluded the claimant was not qualified to receive unemployment insurance benefits, and the account of Distek Integration, Inc. (employer) would not be charged because the claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 25, 2005. The claimant participated in the hearing. Robert Dieter, attorney at law, represented the employer. Sandy Sutterer and Jeff Sandvold appeared as witnesses for the employer. 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:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in May 2004. The claimant worked as a software engineer for the employer's primary client. During the course of her employment, the employer talked to the claimant a number of times about the client's concerns regarding the claimant's work performance. The client had concerns with the claimant's absenteeism and her failure to report to work on time. Since the claimant worked with a team, the client did not like the fact the claimant repeatedly failed to report to work on time.

On April 21, 2005, the employer again met with the claimant about her attendance. The claimant had failed to notify the employer when she would be absent from work and still did not report to work on time. The claimant agreed that effective immediately she would report to work on time and would notify the employer when she was unable to work as scheduled.

After the April 21, 2005 meeting, the claimant reported to work late on April 25, May 2, 3, 4 and 5. On May 13, the claimant did not report to work at all. The claimant sent the employer an email at 11:38 a.m. on May 13 letting the employer know she would be absent from work that day. During the claimant's employment, she experienced migraine headaches and was being treated for depression.

On May 18, 2005, the employer informed the claimant she no longer worked for the employer. The employer's client decided the claimant's job performance was not acceptable and her repeated failure to report to work as scheduled detracted from her team's performance and resulted in the claimant being an unreliable and undependable employee. The employer did not have another job to offer the claimant.

Instead of indicating on the claimant's personnel record that she had been discharged, the employer allowed the claimant to submit a resignation. The claimant submitted her written resignation on May 18, 2005.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. The facts establish the employer initiated the separation of employment. On May 18, 2005, the employer intended to discharge the claimant, but gave the claimant an opportunity to submit her written resignation so her personnel file would reflect a resignation instead of a discharge. Since the employer would have discharged the claimant even if the claimant had not chosen to resign, for unemployment insurance purposes the employer discharged the claimant.

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a

right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The facts establish the employer talked to the claimant a number of times about reporting to work as scheduled. On April 21, 2005, the claimant assured the employer she would start reporting to work as scheduled at 8:00 a.m. Subsequent to April 21, the claimant continued to report to work late. The claimant never notified the employer that she was unable to work as scheduled. The claimant did not provide a doctor's statement to establish any medical reason for reporting to work late. As a result of the claimant's failure to report to work on time, her team was unable to work efficiently. The claimant's repeated failure to report to work at 8:00 a.m. amounts to an intentional and substantial disregard of the employer's interests and the claimant's duty to work as scheduled. The employer discharged the claimant for work-connected misconduct. Therefore, as of May 15, 2005, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's June 9, 2005 decision (reference 02) is modified, but the modification has no legal consequence. The claimant did not voluntarily quit her employment. Instead, the employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of May 15, 2005. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

dlw/kjw