

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERESA A WYNN
Claimant

APPEAL NO. 14A-UI-00598-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED PARCEL SERVICE
Employer

**OC: 12/15/13
Claimant: Respondent (5)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 8, 2014, reference 01, decision that allowed benefits to the claimant provided the claimant was otherwise eligible and that held the employer's account could be charged for benefits. After due notice was issued, a hearing was held on February 10, 2014. Claimant Teresa Wynn did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Eric Krumme represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant, which record indicates that no benefits have been disbursed to the claimant in connection with the claim that was effective December 15, 2013. Exhibits One through Five were received into evidence.

ISSUES:

Whether the claimant separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

Whether the employer's account may be charged for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Teresa Wynn was employed by United Parcel Service on a full-time basis from 1995 and last performed work for the employer on January 16, 2013. Ms. Wynn's work hours were 11:00 p.m. to 3:00 a.m. and 4:45 a.m. to 8:45 a.m. Ms. Wynn's work week was Sunday evening through Friday morning. During the first half of her work day, Ms. Wynn's job involved sorting smaller items. During the second half of her work day, Ms. Wynn's job involved scanning packages, applying stickers to items.

Ms. Wynn's husband had passed away a few months before Ms. Wynn worked her last day for the employer in January 2013. In January 2013, Ms. Wynn was taking prescription antidepressant medication and prescription muscle relaxer medication to address issues with her back. The employer was concerned about Ms. Wynn's ability to perform her work duties under the medication regimen. The company nurse directed Ms. Wynn to return to her doctor to

discuss alternatives to taking the medications she was on and possible drug interaction between the medications. The company nurse then told Ms. Wynn that she had two options, either to quit taking her prescription medications or to go off work and utilize leave under the Family and Medical Leave Act. Ms. Wynn acquiesced in the employer's decision to take her off work.

Thereafter, the employer interacted with Ms. Wynn as if she had requested a leave of absence. Ms. Wynn had not requested a leave of absence, but had instead gone off work at the employer's insistence. On April 8, 2013 and on August 1, 2013, the employer sent Ms. Wynn a letter directing her to provide updated information "justifying" her absence from the employment because her "approved time off" had expired. Ms. Wynn provided the requested information. On August 30, 2013, the employer sent a letter to Ms. Wynn that terminated her from the employment based on "unauthorized leave."

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The administrative law judge notes that employer has not provided testimony from persons possessing personal knowledge concerning Ms. Wynn's separation from the employment. The administrative law judge also notes that Ms. Wynn did not participate in the hearing.

Iowa Administrative Code section 871 IAC 24.32(9) provides as follows:

Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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.

The evidence in the record establishes that it was the employer, not Ms. Wynn, who initiated the separation from the employment. Ms. Wynn went off work in January 2013 at the employer's insistence, not because she had on her own volition requested a leave of absence. The separation took place in January 2013, when the employer suspended Ms. Wynn from the employment. The suspension was not triggered by any misconduct on the part of Ms. Wynn. The August 29, 2013, termination letter merely further memorialized the separation that had taken place several months earlier.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Wynn was discharged for no disqualifying reason. Accordingly, Ms. Wynn is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

Because Ms. Wynn has not attempted to claim benefits in connection with the claim she established on December 15, 2013, there is no need for a remand to adjudicate whether she has been able to work and available for work since she filed her claim.

DECISION:

The Agency representative's January 8, 2014, reference 01, decision is modified as follows. The claimant was discharged for no disqualifying reason, effective January 16, 2013, when the employer compelled her to separate from the employment. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css