

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANGELA S HULL**  
Claimant

**APPEAL NO: 14R-UI-08756-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ACCESSIBLE MEDICAL STAFFING**  
Employer

**OC: 09/22/13**  
**Claimant: Appellant (2/R)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's June 19, 2014 determination (reference 07) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had voluntarily quit her employment for reasons that do not qualify her to receive benefits. A hearing was initially held on July 22, 2014. Another administrative law judge dismissed the claimant's appeal when she did not participate at the hearing. See decision for appeal 14A-UI-06726.

The claimant appealed the 14A-UI-06726 decision to the Employment Appeal Board. The Employment Appeal Board remanded this matter to the Appeals Bureau for another hearing. See decision for 14B-UI-06726. As a result of the remand, another hearing was held on September 11, 2014. The claimant participated at the September 11 hearing. Mindy Butler, an administrator, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds claimant qualified to receive benefits based on the reasons for her employment separation, but this matter will be remanded to the Benefits Bureau to determine the claimant's availability to work after she lost her driver's license and after she was convicted of an OWI charge.

**ISSUE:**

Did the claimant voluntarily quit her employment without good cause attributable to the employer, or did the employer discharge her for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in August 2012. The employer is a temporary medical staffing agency who places nurses at facilities as needed. The claimant worked part time or as needed as a registered nurse for the employer's clients.

The claimant finished an assignment on September 15, 2013. The claimant had accepted an assignment that was to start on September 19, 2013. She was unable to go to that assignment because she was been arrested on an OWI charge.

The claimant contacted the employer on September 19 to report she was unable to go to the September 19 assignment because she was in jail. After the claimant was released from jail, she contacted the employer for another assignment. The claimant was in jail one night. The employer told the claimant they had to wait to find out what action, if any, the board of nursing would take before they could assign her to another job. If the board of nursing put the claimant on probation for the OWI charge, the employer could not assign the claimant to a job because the employer could not supervise her.

The employer learned the board of nursing would investigate the incident but no action would be taken for quite a while because of the board's large number of cases yet to investigate. After learning the board of nursing would not be making an immediate decision, the employer no longer considered the claimant an employee as of November 4, 2013. The claimant understood in October the employer would not assign her to another job.

As a result of the OWI charge, the claimant lost her driver's license in late December 2013. She was convicted of the OWI charge on January 17, 2014. After her OWI conviction the claimant went to a residential facility. As of September 11, 2014, the claimant is still a licensed registered nurse.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer discharged her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The fact the claimant was arrested and in jail overnight does not establish that she intended to quit her employment. Instead, the facts establish the claimant tried to continue working for the employer by notifying the employer she was unable to go the September 19 assignment and contacted the employer for additional assignments after she was released from jail. The facts also indicate the employer made the decision that the claimant would not be assigned to any other jobs. For unemployment insurance purposes, the employer discharged the claimant.

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 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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The evidence indicates the reason the employer did not assign the claimant to another job was because of the employer's concern that the board of nursing would either put the claimant on probation or revoke her nursing license. While the employer's concerns are legitimate, as of September 11, 2014, she is still a licensed register nurse, was not on probation by the board of nursing and did not lose her driver's license until late December 2013. The employer did not establish that the claimant was discharged for work-connected misconduct. Based on the reasons for her employment separation, the claimant is qualified to receive benefits as of September 22, 2013.

Since the claimant lost her driving privileges in late December 2013 and went to a residential facility after her January 17, 2014 conviction the issues of whether the claimant was able to and available for work and eligible to receive benefit as of late December 2013 will be remanded to the Benefits Bureau to determine.

**DECISION:**

The representative's June 19, 2014 determination (reference 07) is reversed. The claimant did not voluntarily quit her employment. Instead, the employer ended her employment for business reasons, but did not establish that the claimant commit work-connected misconduct. As of September 22, 2013, the claimant is qualified to receive benefits based on the reasons for her employment separation. The employer's account is subject to charge.

Since the claimant lost her driver's license in late December 2013 and went to a residential facility after she was convicted of an OWI in mid-January 2014, the issues of whether the claimant is able to and available and eligible to receive benefits as of late December 2013, are **Remanded** to the Benefits Bureau to investigate and determine.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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