

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JESSICA L HOAG**  
Claimant

**APPEAL NO. 11A-UI-07498-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MENARD INC**  
Employer

**OC: 05/08/11**  
**Claimant: Appellant (5)**

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

**STATEMENT OF THE CASE:**

Jessica Hoag filed a timely appeal from the June 6, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 1, 2011. Ms. Hoag participated. Bev Kohanek, department manager, represented the employer and presented additional testimony through Craig Schroeder, human resources coordinator. Exhibits 1 through 22 and A were received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Jessica Hoag was employed by Menard's as a full-time general laborer at the employer's distribution center in Shelby from February 2009 and last performed work for the employer on May 5, 2011. Bev Kohanek, department manager, was Ms. Hoag's immediate supervisor. Ms. Hoag's regular work hours were 7:30 a.m. to 3:00 p.m., Monday through Friday.

On May 5, 2011, Ms. Hoag left work due to illness a little more than an hour after she started. Ms. Hoag properly notified a supervisor before she left. Ms. Hoag was scheduled to work the next day, May 6. On May 6, Ms. Hoag contacted the employer at 7:06 a.m. and notified Ms. Kohanek that she would be absent due to illness. Ms. Hoag was on multiple psychotropic medications for anxiety, depression, and sleep issues, and was having problems with those medications. The employer's written attendance policy required that Ms. Hoag contact the employer prior to the scheduled start of her shift if she needed to be absent. If Ms. Hoag's supervisor was not available to speak with her, she was supposed to leave a message with the other office staff. Ms. Hoag was aware of these requirements.

Ms. Hoag was absent without notifying the employer on May 7 and 9. Ms. Hoag was absent due to illness on May 10, but failed to properly notify the employer by calling before her shift. Instead, Ms. Hoag contacted the employer at 9:01 a.m. Ms. Hoag was next scheduled to work

on May 11. When Ms. Hoag did not appear for work that day, Supervisor Melissa Gerovac telephoned Ms. Hoag. Ms. Gerovac had to leave a voicemail message asking why Ms. Hoag was not coming to work. At 2:10 p.m., Ms. Hoag telephoned the employer and left a message indicating that she would be absent due to illness and had been seen by her doctor. Ms. Hoag was next scheduled to work on May 12. On May 12, Ms. Hoag telephoned the employer at 6:05 a.m., 6:17 a.m., and 6:19 a.m. before she left a voice mail message for Ms. Kohanek, indicating that she would be absent due to illness. Ms. Hoag requested a return phone call to discuss her work status.

Ms. Hoag was absent without notifying the employer on May 13. On that day, Ms. Hoag applied for unemployment insurance benefits. Ms. Hoag was next scheduled to work on May 17. When Ms. Hoag did not appear for work or contact the employer on May 17, Ms. Kohanek telephoned her to ask why she had not been reporting to work. Ms. Hoag said she was tired of fighting with the employer about her absences and hung up on Ms. Kohanek. There was no further contact between the parties after that date.

On May 5, before Ms. Hoag had gone home early, Ms. Hoag had asked Ms. Kohanek to fire her so that she could collect unemployment insurance benefits. Ms. Hoag had been having significant attendance issues. Ms. Hoag had been having transportation issues. Ms. Hoag lived in Council Bluffs and desired to transfer to the employer's store in Council Bluffs. Ms. Hoag made her request to be fired after she learned that her transfer request was denied and after Ms. Kohanek told her that she was going to restart taking disciplinary action on her attendance. Ms. Kohanek had been willing to put off taking action on Ms. Hoag's attendance matters while Ms. Hoag pursued her transfer. Ms. Kohanek had provided Ms. Hoag with Family and Medical Leave Act application materials, but Ms. Hoag did not do anything with those, because she wanted a different job, not a leave of absence.

#### **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.

The weight of the evidence fails to support Ms. Hoag's assertion that she was discharged from the employment by Ms. Gerovac on May 11, 2011. The weight of the evidence establishes that Ms. Hoag knew her supervisor was Ms. Kohanek and knew that Ms. Kohanek, not Ms. Gerovac, was in charge of issuing discipline in connection with her employment. Regardless of what Ms. Gerovac said during the call on May 11, Ms. Hoag knew on that day that she was not discharged from the employment. This is why she called in an absence the next day. Ms. Hoag had been looking for a way to leave the employment. Ms. Hoag had recently learned that she would not be allowed to transfer to Council Bluffs. Ms. Hoag was no longer interested in making the trip to Shelby. The weight of the evidence establishes that Ms. Hoag voluntarily quit. She communicated this to the employer by not appearing for her shifts on May 13 and 17 and by hanging up on Ms. Kohanek on May 17, when Ms. Kohanek was trying to find out why Ms. Hoag had not been appearing for work. The weight of the evidence establishes a voluntary quit, not a discharge.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

When a worker voluntarily quits employment due to dissatisfaction with the work environment, a personality conflict, or dissatisfaction with the commute, though they knew the commuting distance ahead of time, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(21), (22), and (30).

The weight of the evidence establishes a voluntary quit without good cause attributable to the employer. The weight of the evidence establishes that Ms. Hoag simply did not want to work at the employer's Shelby facility any longer, due to transportation issues, dissatisfaction with the employment, and dissatisfaction with the employer. When Ms. Hoag was denied a transfer, she ceased appearing for work and filed a claim for unemployment insurance benefits. Because Ms. Hoag's quit was without good cause attributable to the employer, she is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Hoag.

**DECISION:**

The Agency representative's June 6, 2011, reference 01, decision is modified as follows. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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