

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

DAWN M CHAPIN
607 – 31ST AVE SW
ALTOONA IA 50009

CITICORP CREDIT SERVICES INC USA
C/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166

Appeal Number: 04A-UI-11999-JTT
OC: 05/16/04 R: 02
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 for Misconduct
Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Citicorp Credit Services (Citicorp) filed an appeal from a decision of a representative dated October 28, 2004, reference 01, which held that no disqualification would be imposed regarding Dawn Chapin's separation from employment. After due notice was issued, a telephone conference hearing was scheduled for and held on November 30, 2004. The claimant participated personally. The employer participated by Kristin McClure of Citicorp's Human Resources Department. Employer's Exhibits One and Two were received into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Chapin was employed by Citicorp from June 1, 2004 until October 2, 2004 as a full-time customer service representative. Ms. Chapin's assigned work schedule was 7:00 a.m. to 3:30 p.m., Friday through Tuesday. Jonathan Wilford was Ms. Chapin's unit manager and immediate supervisor. Mr. Wilford worked Monday through Friday. Mr. Wilford discharged Ms. Chapin on October 4, 2004 because of excessive absences.

Mr. Wilford was not available to testify at the hearing and the employer's representative did not have any discussion with Mr. Wilford regarding Ms. Chapin's separation from employment. The only contact the employer's representative had with Mr. Wilford regarding this matter was a note she received from Mr. Wilford on October 5, 2004, which indicated Ms. Chapin had been absent for three consecutive days on October 3 through 5 without notifying Citicorp.

The final incident that prompted Mr. Wilford to terminate Ms. Chapin was her absence from work on Saturday and Sunday, October 2 and 3, 2004. Ms. Chapin was scheduled to work these days but stayed home to care for her 11-year-old daughter, who was sick with the flu. Ms. Chapin had attempted, unsuccessfully, to enlist her own father to care for her daughter.

On the morning of October 2, Ms. Chapin followed company policy by alerting Citicorp's Resource Management Department and her immediate supervisor that she would be absent from work. At 6:30 a.m., Ms. Chapin telephoned the Resource Management Department and advised she would be absent from work due to the necessity of caring for her ill child. The company's coding on Ms. Chapin's timesheet confirms that Ms. Chapin did call the Citicorp Resource Management Department on that day. Immediately after speaking with Resource Management, Ms. Chapin left a voice mail message for Mr. Wilford, who would not have been scheduled to work during the weekend. Ms. Chapin's message advised Mr. Wilford that she would need to be absent for both Saturday and Sunday.

Mr. Wilford contacted Ms. Chapin by telephone on the morning of Monday, October 4, as Ms. Chapin was getting ready for work. At that time, Mr. Wilford advised Ms. Chapin that he did not think she was willing to do her job, that he did not think she was right for the company, and that she need not return. Ms. Chapin took this to mean that she was discharged.

The number of Ms. Chapin's previous absences from work had been an ongoing concern to Mr. Wilford. In August, Ms. Chapin had missed work to care for her daughter, who at that time was sick with strep throat. After that absence, Mr. Wilford had given Ms. Chapin a verbal warning regarding excessive absences and asked her whether she really wanted to work for Citicorp.

At the time of this initial warning, Ms. Chapin shared with Mr. Wilford that she was a single mother and had difficulty finding childcare, especially when her daughter was ill. Ms. Chapin is without additional family, friends, or community support to assist her in the care of her daughter. The only exception to this is Ms. Chapin's father, who is only able to provide limited childcare assistance to Ms. Chapin, due to his own work schedule.

Ms. Chapin subsequently missed another day of work in mid-September, when she herself was ill. After this absence, Ms. Chapin was summoned to meet with Mr. Wilford and Janet Lightfoot, head of customer service, and received a written warning that subsequent absences could lead

to disciplinary action up to and including termination. Ms. Chapin was subsequently absent from work September 26, 27, 28, and October 1. During these dates, Ms. Chapin had been ill, and then her child became ill as well.

The employer's philosophy, policy, and procedures regarding absences is set forth in the employee handbook. Ms. Chapin received a copy of the handbook. The relevant portion of the handbook was received into evidence as Employer's Exhibit One. The following text appears under the section heading, "Absence and Lateness":

Good attendance and being on time are essential to the effective accomplishment of every job of every employee and the Company's daily business operations. The company acknowledges that balancing work and family life can be a challenge. As a result, we recognize that illness or other compelling personal situations may force you to be either late or absent from work in which case, follow these procedures.

On each day Ms. Chapin had been absent from work, she had followed the employer's procedure by contacting the Resource Management Department and telephoning Mr. Wilford.

The employer's policy and procedures call for a period of paid "decision-making leave" prior to termination of an employee to give the employee an opportunity to reflect on issues negatively impacting their employment and whether they wish to address those issues and continue with Citicorp. Ms. Chapin was never placed on such a leave.

Upon discharge from employment with Citicorp, Ms. Chapin applied for unemployment insurance benefits and has been receiving benefits since the benefit week ending October 9, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Chapin was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving unemployment insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)(a). The employer has the burden of proving disqualifying misconduct. Iowa Code section 96.6(2) Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

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).

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Ms. Chapin testified that Mr. Wilford telephoned her as she was getting ready for work on the morning of October 4 and told her she need not return to work due to excessive absences. Ms. Chapin testified that each absence was due to illness in herself or her 11-year-old daughter, and that she followed appropriate procedures for notifying the employer on each day she was absent. The employer's representative testified that Ms. Chapin had exceeded her allotment of unplanned leave, but that there was no indication that Ms. Chapin failed to follow proper policy and procedures in notifying the employer of the need to be absent.

The employer's representative could not testify to the reasons for the absences, any prior warnings received by Ms. Chapin, or any discussions that occurred between Mr. Wilford and Ms. Chapin. Indeed, Ms. McClure's testimony in this matter was based almost entirely on a cursory note/form from Mr. Wilford contained in Ms. Chapin's personnel file.

This administrative law judge found Ms. Chapin to be a candid, credible witness. Ms. Chapin provided even-handed testimony that both helped and hurt her position. For example, even though the employer's representative had no knowledge of any prior absences or reprimands, Ms. Chapin offered detailed testimony about these matters.

At the hearing, the employer's representative characterized Ms. Chapin's separation from employment as a voluntary quit without good cause attributable to the employer based on an alleged abandonment of employment. The only evidence presented to support this assertion was the cursory note/form Mr. Wilford submitted to Ms. McClure on or about October 5, 2004. Ms. McClure provided testimony regarding the note/form; however, the document was not submitted as an exhibit.

871 IAC 24.25(4) provides:

- (4) The claimant was absent for three days without giving notice to employer in violation of company rule.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980); Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). Mr. Wilford did not testify. Ms. McClure's testimony regarding Ms. Chapin's absences was based on hearsay. Ms. McClure played no role in supervising Ms. Chapin. Nor did it appear Ms. McClure had ever met or spoken with Ms. Chapin. Nor did Ms. McClure speak with Mr. Wilford about any single issue regarding Ms. Chapin's employment with Citicorp. The administrative law judge did not question Ms. McClure's credibility as a witness, but the quantity and quality of information upon which Ms. McClure's testimony was based. The administrative law judge concludes Ms. Chapin neither evidenced an intention to quit her employment, nor took any action evidencing such an intention to quit. On the contrary, on October 4, 2004 Ms. Chapin was preparing to return to work immediately after her daughter had sufficiently recovered from her illness, when Mr. Wilford terminated her employment. See 871 IAC 24.26-8.

The administrative law judge concludes that Ms. Chapin was discharged, and that there was no misconduct that would disqualify her from receiving unemployment insurance benefits.

DECISION:

The representative's decision dated October 28, 2004, reference 01, is affirmed. The claimant is eligible to receive unemployment insurance benefits, provided the claimant meets all other eligibility requirements.

tjc/b