

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**HEATHER L THOMPSON**  
Claimant

**APPEAL 15A-UI-14151-DL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CEDAR VALLEY HOSPICE INC**  
Employer

**OC: 11/29/15  
Claimant: Respondent (4)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1)a – Voluntary Quitting – Other Employment

**STATEMENT OF THE CASE:**

The employer filed an appeal from the December 15, 2015 (reference 01) unemployment insurance decision that allowed benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on January 14, 2016. Claimant participated. Employer participated through clinical services director Stacy Weinke and director of finance Michaela Vandersee.

**ISSUE:**

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a hospice aide for the Independence office from June 18, 2013 and was separated from employment on November 24, 2015; when she quit with notice to go to work for a competitor on December 24, 2015. The employer's policy calls for immediate separation in these circumstances. Claimant was paid five days' wages through November 30, 2015 and the balance of her vacation hours 66.46 hours for total of \$863.32 through December 11, 2015. She reported vacation pay of \$192 the week-ending December 5, 2015 and \$520 for the week-ending December 12, 2015. She was paid partial benefits of \$132 the week-ending December 5, 2015. She made no claims after the week-ending December 12, 2015. Claimant was paid partial benefits of \$132 for the one week-ending December 5, 2015; to which she was not entitled. The vacation pay issue has been resolved by the unemployment insurance decision dated December 31, 2015 (reference 02) that denied benefits for the week ending December 5, 2015; due to the receipt of vacation pay.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer but was discharged for no disqualifying reason prior to the intended resignation date.

Iowa Code § 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.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.25(38) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer

has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

The discharge in response to claimant's resignation notice to work for a competitor does not establish misconduct. Since the employer terminated the employment relationship in advance of the resignation notice effective date, the claimant is entitled to benefits from the date of termination until the effective date of the proposed resignation, provided she is otherwise eligible. But see vacation pay unemployment insurance decision (reference 02) mentioned above.

**DECISION:**

The December 15, 2015 (reference 01) decision is modified in favor of the appellant. The claimant voluntarily left the employment without good cause attributable to the employer but was discharged prior to the resignation effective date. Benefits are allowed, provided she is otherwise eligible until December 24, 2015. Thereafter, benefits are allowed pursuant to Iowa Code § 96.5(1)a and the employer's account would not be chargeable. Note that claimant has been found not eligible for benefits for the two weeks she did claim benefits; thus, no charges will accrue to the employer on that basis either.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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