

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIVEL D GOMEZ

Claimant

APPEAL NO. 13A-UI-02558-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QPS EMPLOYMENT GROUP INC

Employer

OC: 01/06/13

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

Section 96.4-3 – Able to and Available for Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 21, 2013, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on April 18, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Rhonda Hefter participated in the hearing on behalf of the employer with a witness, Anna Martinez.

ISSUES:

Was the claimant discharged for work-connected misconduct?

Was the claimant able to and available for work?

FINDINGS OF FACT:

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. The claimant worked an assignment for the employer at Bochner Chocolates from August 23 to December 19, 2012. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled.

After December 19, 2012, production at Bochner Chocolates was shut down until December 26. The claimant had an elementary-aged son who was out of school until January 3, 2013. The claimant was having problems arranging for a babysitter for her son over the holiday school break. The claimant approached her manager at Bochner Chocolates, Megan Calbert, and asked if she could return to work on January 3. Calbert agreed and the claimant completed a time off request, which was approved by Calbert.

Following the instructions she had been given by the employer, the claimant called the employer's branch manager, Anna Martinez, and left a message for her. In the message, she informed Martinez that she had been given permission by Calbert to return to work on January 3.

Martinez called the claimant around December 24 and told the claimant that Bochner Chocolates needed her to return to work on December 26. The claimant told Martinez that she had been approved to be off work until January 3. She said she could not arrange for a babysitter with such short notice. Martinez told the claimant that if she did not report to work on December 26 that she did not have a job. The claimant reasonably believed that she was discharged because she was not able to return to work on December 26. There was some discussion afterward about the claimant working part-time but that was because she believed her employment at Bochner Chocolates was ended and she needed some income coming in.

The claimant filed a new claim for unemployment insurance benefits with an effective date of January 6, 2013. As of January 3, 2013, the claimant was able to work full time without restrictions the hours she had previously worked at Bochner Chocolates.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant's testimony was credible. I believe that the claimant had sought and obtained permission to return to work on January 3 and had notified the branch manager about the arrangement. For some reason, the employer or Bochner Chocolates reneged on the agreement and told the claimant she needed to return on December 26. The claimant was justified in declining to go back to work prior to the agreed upon time. I believe branch manager informed the claimant that if she did not return to work the next day, she would not have a job and the claimant reasonably believed she was discharged. No willful and substantial misconduct has been proven in this case.

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3. As of the date the claimant applied for unemployment insurance benefits, she was able to work and available for full-time work without restrictions.

DECISION:

The unemployment insurance decision dated February 21, 2013, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs