

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHERRI ADKINS-DIA**  
Claimant

**APPEAL NO. 10A-EUCU-00910-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ELLIOTT OIL COMPANY**  
Employer

**OC: 08/22/10**  
**Claimant: Appellant (2/R)**

Section 96.5-2-a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's September 22, 2010 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant participated in the hearing. Terrence Deneffe, attorney at law, represented the employer. Dave Palmer, the general manager, and Paula Tucker, the manager and the claimant's former supervisor, testified on the employer's behalf. During the hearing, Employer Exhibits One and Two were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concluded the claimant is qualified to receive benefits based on the reasons for her employment separation, but two other issues are remanded to the Claims Section to determine.

**ISSUE:**

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits, or did the employer discharge her for work-connected misconduct?

**FINDINGS OF FACT:**

The employer hired the claimant to work as a third-shift or overnight cashier and stocker in January 2007. While the claimant was working in mid-April 2009, she was involved in an incident that emotionally traumatized her. The claimant did not say anything about the traumatizing incident to Tucker until June 2009. After the employer learned about the incident, the employer encouraged the claimant to seek professional counseling and report the incident to the police. Although the claimant was traumatized by the incident, she worked for the employer until August 29, 2009. The claimant worked until her treating physician restricted her from working the overnight or third shift.

Although the claimant was restricted from working any overnight shifts for three months (Employer Exhibit One), she still wanted to work first or second shift. Tucker did not schedule her to work as a fill-in employee on first or second shift because she was hired to work third shift

and the claimant told Tucker the medication she had been prescribed made her very sleepy. The employer could not have sleepy employees at work.

When Tucker did not hear from the claimant by November 29, she assumed the claimant was not returning to work. As of late November or December 2009, Tucker no longer considered the claimant an employee. As a result, she made no attempt to schedule her to work.

On February 23, 2010, the claimant gave the employer another doctor's note that indicated she was still restricted from working any overnight shifts for at least another month. (Employer Exhibit Two.) As of the date of the hearing, the claimant's doctor does not want the claimant to work third shift.

The claimant initially established a claim for benefits during the week of August 23, 2009. The employer did not contest her unemployment insurance benefits because the employer wanted her to get the medical help she needed. When the claimant's benefit year ended on August 21, 2010, the Department was required to determine if she was eligible to establish a new benefit year and receive regular unemployment insurance benefits instead of Emergency Unemployment Compensation benefits. As a result of the new benefit year, the Department had a fact finding interview and determined the claimant voluntarily quit her employment for reasons that do not qualify her to receive benefits.

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

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. When the claimant gave the employer the August 2009 work restriction that she could not work any overnight shifts for three months, she had no intention of quitting. Although the claimant asserted she wanted to work first or second shifts, Tucker's testimony that claimant told her the medication she had been prescribed made her very sleepy is credible. As a result of being very sleepy, Tucker's concern about scheduling the claimant the next three months was legitimate. Even though the evidence does not indicate the claimant was formally put on a medical leave of absence, Tucker understood the claimant would contact her by late November or early December 2009 about whether she could return to work or not. When the claimant did not make this contact, Tucker no longer considered her an employee. As of early December 2009, the employer no longer considered the claimant an employee. Since the claimant was still unable to work the shift she had been hired to work, the reasons for the claimant's discharge do not constitute work-connected misconduct.

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant's assertion that the employer discharged her in October when she checked on her 401K plan is not supported by the evidence. If the claimant truly believed she had been discharged in October 2009, it makes no sense for her to give the employer the February 23,

2010 doctor's restriction. The evidence indicates that as of February 2010, the employer considered the possibility of rehiring the claimant.

As of August 29, 2009, the claimant's availability must be examined. While being restricted to no overnight work does not necessarily make the claimant unable or unavailable for work, the fact she was on medication that made her sleepy could make her unavailable for work and ineligible to receive benefits. The claimant testified she was being treated and even as of late March 2010, her physician had not released her to work any overnight shifts. As a result of the underlying reason for her treatment and the medication she took, the issue of her ability and availability for work as of August 30, 2009, is remanded to the Claims Section to determine. The Claims Section should examine the claimant's medical records to determine her availability for work.

Also, the computer records indicate that after the claimant was held ineligible to receive regular benefits as of August 22, 2010, because she had not earned \$250 since August 23, 2009, she became employed in mid-October 2010 and has satisfied this eligibility requirement. The Department, however, has been paying her Emergency Unemployment Compensation benefits instead of regular benefits. The issue of when the claimant met the \$250 eligibility requirement to establish a subsequent benefit year and receive regular unemployment insurance benefits is remanded to the Claims Section.

**DECISION:**

The representative's September 22, 2010 determination (reference 01) is reversed. The claimant did not quit her employment. Instead, the employer ended her employment by early December 2009 for reasons that do not constitute work-connected misconduct. An issue of whether the claimant is able to and available for work as of August 30, 2009, is **Remanded** to the Claims Section to investigate and issue a written decision to both the claimant and employer. Also the issues of when the claimant is eligible to receive regular unemployment insurance benefits instead of Emergency Unemployment Compensation benefits on a claim established during the week of August 22, 2010, and if she has been overpaid are also **Remanded** to the Claims Section to determine.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs