

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARCY A WESTPHAL
Claimant

APPEAL NO: 14A-UI-08167-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRESTVIEW ACRES INC
Employer

OC: 07/13/14
Claimant: Appellant (5)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's July 31, 2014 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she voluntarily quit this employment for reasons that do not qualify her to receive benefits. The claimant participated at September 22 hearing. Harold McElderry, the administrator, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that do not qualify her to receive benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in 1999. She worked as a full-time CNA. The claimant knew the employer's written attendance policy informs employees that if they have one no-call/no-report incident the employer could consider the employee to have voluntarily resigned. Typically, before an employee's employment ends, the employer does not end the employment relationship until an employee has three no-call/no-show incidents.

In 2014, the claimant was on FMLA in February, March and April. The claimant worked as scheduled on May 5. She worked the 2 to 10 p.m. shift. The claimant was scheduled to work on May 7, 8 and 9. She did not call or report to work any of these days. The claimant usually works five days a week.

The employer called the claimant on May 7 to find out why she had not reported to work. The claimant did not answer so the employer left a message asking her to call the employer. The claimant did not call. The first time the claimant had any contact with the employer was on May 16 when she went to the office to pick up her paycheck. When she picked up her check, the director of nursing wished her luck in finding a new job. The claimant was surprised by the comment, but did not talk to anyone one about her employment status at work. The employer

no longer considered her employee when she did not call in or report for three consecutive days she was scheduled to work.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The facts do not establish that the claimant voluntarily quit her employment. Instead, the employer initiated the employment separation and discharged the claimant as of May 10, 2014.

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant does not remember if she was scheduled to work in May or that she did not call or report to work in early May. The claimant may or may not have had a working phone on May 7. Again she does not know. After the claimant's employment ended, she was diagnosed with some health issues. The evidence does not establish how or if these health issues affected the claimant in early May.

The fact the claimant did not call or report to work as scheduled for three days and did not say anything to management about her employment status, supports a conclusion that she intentionally and substantially disregarded the standard of behavior the employer has a right to expect from an employee. Without any explanation as to what happened after May 5, the employer discharged the claimant for work-connected misconduct. As of July 13, 2014, the claimant is not qualified to receive benefits.

DECISION:

The representative's July 31, 2014 determination (reference 01) is modified, but the modification has no legal consequence. The claimant did not voluntarily quit her employment. Instead, the employer discharged the claimant for reasons constituting work connected misconduct when the claimant did not return to work after May 5, 2014. As of July 13, 2014, the claimant is disqualified from receiving unemployment insurance benefits. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css