

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN E STEINBACH
Claimant

APPEAL NO. 11A-UI-08150-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 05/01/11
Claimant: Respondent (4/R)

Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer appealed a representative's June 10, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant voluntarily quit his employment for reasons that qualified him to receive benefits. The claimant participated in the hearing. Treve Lumsden, a TALX representative, appeared on the employer's behalf. Tabitha Wilker, the administrator, and Sarah Thomas, the director of nursing, testified on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant eligible to receive benefits May 1 through 28, but is disqualified from receiving benefits as of May 29, 2011.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in January 2011. The employer hired the claimant as a full-time registered nurse. After the claimant started working, the claimant reluctantly agreed in mid-February to work as a CNA some days and as a registered nurse so he could work full-time hours. After the claimant agreed to work some days as a CNA, the employer frequently did not contact him to let him know he would be working as a nurse instead of a CNA or vice versa. Changes without notification bothered the claimant, because he wore different uniforms to work when he worked as a registered nurse or as a CNA. When the claimant reported to his scheduled third shift assignment on April 13, the schedule had again been changed to have him work as a registered nurse instead of a CNA. No one was working his CNA shift he had been scheduled to work. In accordance with the employer's open door policy, he called Thomas and talked to her about this frustrating situation around 10 p.m. The claimant woke up Thomas, who had been sleeping. While he expressed his frustration with the situation, Thomas concluded the claimant had a bad attitude and was too upset to work. Thomas told the claimant that if he could not calm down, he should go home. The claimant went home as he understood Thomas directed him to do.

On April 13, the claimant had been scheduled to work as a CNA. The nurse who had been scheduled to work third shift called in earlier that day to report she was unable to work as scheduled. Thomas was called at home and agreed the claimant could work as a registered nurse. No one

thought to call the claimant to let him know he was working as a registered nurse and not as a CNA that shift.

The claimant did not know Thomas wrote him up for leaving work on April 13 and for what she deemed as the claimant's bad attitude toward her on April 13. The employer did not give the claimant the written warning until the morning of April 26. Before the employer gave the claimant the written warning, he gave Thomas a written note indicating a resident reported to him that an employee had abused the resident. Thomas threw away the note and told the claimant that this resident exaggerates. Thomas then told the claimant he was receiving a written warning and would be suspended for leaving work on April 13 and for the attitude he displayed toward her over the phone and because he told her he would not work as a nurse that shift. The claimant declined to sign the warning, because did not believe Thomas accurately described the April 13 incident. When Thomas accused him of arguing with her, the claimant told he her that he was not arguing but did not agree with how she had characterized the April 13 incident. He then told Thomas he would pick not up any extra shifts she had talked to him about moments earlier. Thomas then asked the claimant if he wanted to resign. While both Thomas and the claimant were upset, he completed a resignation notice with an effective date of May 26, 2011. The claimant wrote on the notice he resigned because of job dissatisfaction, receiving a false write-up after Thomas told him to go home 13 days earlier on April 13.

After the claimant submitted his resignation, he contacted the Department of Inspections and Appeals to report the resident's complaint that he had told Thomas about that morning. On May 5, the employer saw a note in the resident's file the claimant had written that the resident reported Thomas had called her (the resident) a liar. The claimant reported this additional information to the Department of Inspections and Appeals. When the employer saw the report on a nurse's note form, the employer concluded the claimant was trying to get Thomas into trouble and had tried to hide the note. On May 5, the employer informed the claimant he was done and could not return to work. The claimant had planned to work until the effective date of his resignation.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1),)2)a. On April 26, the claimant made the decision to give the employer his resignation notice with an effective date of May 26 or late May.

The law presumes a claimant voluntary quits without good cause when he resigns after he receives a reprimand. 871 IAC 24.25(28). Both the claimant and Thomas became upset after the claimant disagreed with Thomas's decision to give him a final written warning and a suspension for the April 13 incident. The claimant established compelling personal reasons for resigning, but if he did not agree with Thomas's decision to discipline him, he should have gone to the administrator to resolve the issues with Thomas and did not. The claimant did not establish that he quit for reasons that qualify him to receive benefits. As of May 29, the claimant is not qualified to receive benefits.

When a claimant gives advance notice of his resignation and the employer discharges him prior to the effective date of his resignation, no disqualification shall be imposed from the last day of work until the proposed resignation date. 871 IAC 24.25(38). The employer discharged the claimant on May 5, before the effective date of his resignation.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may

not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

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 and Thomas did not get along which was evidenced by the April 26 incident when the claimant resigned. Even though the employer asserted the claimant was trying to make trouble for Thomas, the evidence does not support this assertion. The employer established business reasons for ending the claimant's employment early, but he did not commit work-connected misconduct. The claimant is eligible to receive benefits for the weeks ending May 7 through 28, 2011.

An issue of overpayment of benefits the claimant may have received since May 29 will be remanded to the Claims Section to determine.

DECISION:

The representative's June 10, 2011 determination (reference 01) is modified in the employer's favor. The claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits. Since the employer ended his employment before the effective date of his resignation for reasons that do not constitute work-connected misconduct, the claimant is eligible to receive benefits for the weeks ending May 7 through 28, 2011. The claimant is disqualified from receiving unemployment insurance benefits as of May 29, 2011. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. An issue of overpayment of benefits or whether the claimant is eligible for a waiver of any overpayment is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw