

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOLEEN K POND**

Claimant

**APPEAL NO. 12A-UI-09124-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS ENTERPRISES INC**

Employer

**OC: 06/17/12**

**Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Wells Enterprises, filed an appeal from a decision dated July 20, 2012, reference 03. The decision allowed benefits to the claimant, Joleen Pond. After due notice was issued a hearing was held by telephone conference call on August 22, 2012. The claimant participated on HER own behalf and was represented by Jay Fitz. The employer participated by Human Resources Generalist Courtney Wilson and was represented by TALX in the person of John Henson.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Joleen Pond was employed by Wells from November 7, 2011 until June 17, 2012 as a full-time temporary production worker. She was injured on the job April 12, 2012, when she had a bad reaction to some silicone spray used to lubricate areas in the packing room. The Friday before a co-worker had allegedly sprayed her with silicone and she had become ill, the further exposure on April 12, 2012, exacerbated the reaction.

A first report of injury was filed and, in accordance with the company policy in such cases, she was administered a drug screening test. Until the results could be received she was on suspension and her badge was taken away. On April 23, 2012, the doctor said she could return to work and the employer would contact her. On May 2, 2012, Human Resources Generalist Courtney Wilson contacted the claimant and set up a meeting for May 23, 2012.

At that meeting the claimant was present, along with Ms. Wilson and the human resources compliance manager. The employer needed further information about the allegation of assault against the claimant's co-worker, and Ms. Pond also provided a statement from her doctor which required she not be in the production area where silicone was used. Another job for which the claimant had previously applied had already been filled and although she was notified

she was free to apply for any internally posted vacancies, none were available to her with her restrictions and her qualifications.

Further attempts to meet with the claimant were unsuccessful because she told the employer representatives they must talk with her attorney. The employer offered to set up a meeting which both Ms. Pond and her representative could attend but no attempt was made by the claimant or her counsel to set up any such meeting. In addition, the claimant never asked why her badge had been taken away from her April 12, 2012, and never sought to clarify her position.

Joleen Pond filed a claim for unemployment benefits with an effective date of June 17, 2012. She stated in her application she had been laid off for lack of work but at the appeal hearing stated she decided she had been fired on April 12, 2012, when her badge was taken away.

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

Iowa Code section 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.

871 IAC 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.

The claimant maintained she had been fired April 12, 2012, when her badge was taken away pending the result of the post-accident drug screening. The administrative law judge does not find this to be credible given the fact that at the May 23, 2012, meeting Ms. Pond expected to return to work in the next few weeks. What she may have decided, in retrospect, to be the effective date of her separation cannot be given any weight.

But the fact remains she expected to return to work some short time in the future as of May 23, 2012, except that Wells did not have any work she could do within the restrictions and qualifications. When she filed for unemployment benefits the employer assumed she had quit but there is no evidence of that. A voluntary quit requires an intention to quit accompanied by an overt act carrying out that intent. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). Neither of these were present.

Although the administrative law judge believes the claimant could have made a more diligent effort to get answers to her questions from the employer, or at least schedule a meeting with the employer with her attorney, this does not alter the fact the claimant did not quit but was discharged by the employer. She had no intention to quit but was expecting to be contacted about returning to work when a job could be secured within her restrictions.

The record establishes the claimant did not quit but was discharged. There is no evidence of misconduct and disqualification may not be imposed.

**DECISION:**

The representative's decision of July 20, 2012, reference 03, is affirmed. Joleen Pond is qualified for benefits, provided she is otherwise eligible.

---

Bonny G. Hendricksmeier  
Administrative Law Judge

---

Decision Dated and Mailed

bgh/pjs