

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHERYL L OHM BALDERAS
Claimant

APPEAL NO. 12A-UI-02044-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOWS PROPERTY GROUP INC
Employer

**OC: 10/30/11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Quit
Section 96.6-2 – Timely Appeal

STATEMENT OF THE CASE:

Dows Property Group, Inc. filed an appeal from an unemployment insurance decision dated December 12, 2011, reference 01, that allowed benefits to Cheryl L. Ohm Balderas. After due notice was issued, a telephone hearing was held March 16, 2012 with Ms. Ohm Balderas participating and presenting additional testimony by Nicholas Balderas and Terri Nieders. Office Manager Jennifer Erickson participated for the employer.

ISSUES:

Can the appeal be accepted as timely?
Was the separation a quit or a discharge?
Was the separation a disqualifying event?

FINDINGS OF FACT:

Dows Property Group, Inc. properly notified Iowa Workforce Development that it had changed its official mailing address from PO Box 231, Ames Iowa to 1328 XB Place in Ames, Iowa prior to December 12, 2011. Nevertheless, the agency mailed a fact-finding decision to the employer at the old address on December 12, 2011. The employer did not receive it in time to file a timely appeal. It filed its appeal after learning of the existence of the decision.

Cheryl L. Ohm Balderas was employed as an assistant manager by Dows Property Group, Inc. from June 9, 2009 until she was discharged November 4, 2011. At the time of discharge Ms. Ohm Balderas was working part time because of medical restrictions. She was discharged by General Manager Jeff Mosiman because she could not return to full-time work on November 4, 2011.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the appeal can be accepted as timely. The administrative law judge concludes that it can. The evidence persuades the administrative law judge that the delay in filing the present appeal was caused by the agency's failure to update its address records for Dows Property Group. Under these circumstances, additional time for filing the protest may be granted. See 871 IAC 24.35.

The next question is whether the separation was a quit or a discharge. Ms. Ohm Balderas testified with corroboration that she was discharged by Mr. Mosiman. Mr. Mosiman was not called to testify. It appears Ms. Erickson had no firsthand knowledge. The administrative law judge concludes that the separation was a discharge.

The final question is whether the evidence establishes that the discharge was for misconduct in connection with the work. It does not.

Iowa Code § 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 employer has the burden of proof. See Iowa Code § 96.6-2. The employer has not established that Ms. Ohm Balderas acted in bad faith in refusing to return to full-time work because of her medical restrictions. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated December 12, 2011, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs