

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

KRISTI K WILLIAMS
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ABCM CORPORATION
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HAMPTON IA 50441-0436

Appeal Number: 05A-UI-11859-DWT
OC: 10/30/05 R: 02
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Kristi K. Williams (claimant) appealed a representative's November 15, 2005 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of ABCM Corporation (employer) would not be charged because the claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 7, 2005. The claimant participated in the hearing. Bev Foote appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on October 1, 2004. The claimant worked as a full-time CNA. Ann Wenzel, the director of nursing, was the claimant's supervisor. When the claimant reported to work on October 26, 2005, she knew something was wrong because Wenzel made the shower assignments and no one talked to or asked to help the claimant. The claimant went to Wenzel's office to find out what was wrong. She then learned a co-worker complained about the claimant and others talking about her. The claimant denied she had said anything about the co-worker and was upset that such a complaint had been made against her. The claimant learned Wenzel was having a mandatory meeting at 2:00 p.m. that day to talk to everyone.

The claimant then went to the dining room to help residents. A friend of the claimant noticed there was something wrong and asked the claimant why she seemed upset. The claimant told her friend about the mandatory meeting and made the comment that the girls she worked with were acting like high school kids. The claimant then saw the employee, who had made a complaint against her, leave the dining room. The claimant assumed this employee went and complained to Wenzel again.

About 40 minutes later, Wenzel approached the claimant and told her to report to her office. The claimant noticed that Wenzel was angry. When the claimant arrived at Wenzel's office other supervisors were present. Wenzel told the claimant she would not tolerate the claimant talking down about the employer. The claimant tried to explain what she had done and said but the employer had already talked to some other employees and concluded the claimant caused a disruption in the dining room when she talked to her friend. Wenzel then threw a piece of paper at the claimant and told her to sign it. The claimant did not read the paper and refused to sign the paper. The claimant did not plan to sign a paper that indicated she was terminated. When Wenzel told the claimant to leave and go home, the claimant believed the employer had just discharged her. The claimant believed the employer wanted to discharge her because the claimant wanted to work nights like she had been doing until recently. A couple of months earlier the employer asked the claimant to work days instead of nights because the employer knew the state was going to inspect its facilities and needed the claimant to work days. The claimant agreed at that time to work days because she understood if she did not work days, she no longer had a job. The claimant did not want to work days permanently.

The employer did not initially intend to discharge the claimant on October 26. Instead, based on reports from some employees the employer decided to suspend the claimant for one day for creating a disturbance in the dining room. When the claimant did not report to work the next day, the employer did not call her to find out why she did not report to work as scheduled. In the past, when the claimant had been late, the employer called her to find out why she was not at work on time. The claimant did not contact the employer because she believed Wenzel had discharged her on October 26, 2005. When the claimant did not report to work anytime after October 26, 2005, the employer terminated her employment relationship as of October 29 or 30, 2005.

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. The evidence does not establish that the claimant had any intention of quitting on October 26, 2005. When the claimant went home as the employer directed her to do, she reasonably believed the employer had discharged her. Even though Foote asserted Wenzel told the claimant she was suspended for one day, Wenzel was not at the hearing to testify. Foote was not present on October 26 when Wenzel told the claimant to leave and go home. None of the employees who reported the October 26 dining room incident testified either. The claimant's testimony is credible. While the employer decides who attends unemployment insurance hearings, in this case the employer relied on unsupported hearsay information. A preponderance of the credible evidence does not establish that the employer told the claimant she was suspended for one day. The fact the employer decided to suspend the claimant for one day without even talking to the claimant or the employee she talked about the reported dining room disruption further indicates the employer wanted to terminate the claimant's employment.

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).

Since the claimant did not sign or receive a copy of the employer's disciplinary written warning on October 26, it is troublesome that the employer made no attempt to contact the claimant on October 27. The employer's failure to clear up any miscommunication or confusion supports a finding that the employer discharged the claimant. On October 26, 2005, the claimant may have used poor judgment when she told her friend that other employees acted like high school girls. The facts, however, do not establish that the claimant "put down" the employer or even created a disruption in the dining room. The evidence does not establish that the claimant committed work-connected misconduct. As of October 30, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's November 15, 2005 decision (reference 01) is reversed. The claimant did not voluntarily quit her employment. The employer ultimately discharged the claimant for reasons that do not constitute work-connected misconduct. As of October 30, 2005, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/pjs