

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARY A JERKOVICH
Claimant

ADP INC
Employer

APPEAL NO. 14A-UI-06289-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/18/14
Claimant: Appellant (2/R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 12, 2014, reference 01, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on July 10, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer from September 2004 to May 21, 2013. She initially worked in the COBRA department, but when that department closed she transferred to another department working as a customer service representative in the health and welfare department from March to May 2013.

The claimant went on short-time disability in May 2013, due to anxiety and depression triggered by detrimental working conditions, with the advice of her doctor. In November 2013 the claimant's short-time disability ended and she was placed on an approved medical leave. In February 2014 the employer dissolved the health and welfare department.

On May 21, 2014 the employer terminated the claimant's employment because she had not yet been released to return to work and the employer only allowed employees to be on leave for one year. The claimant never quit her employment or notified anyone with the employer that she had quit.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992). The evidence does not show that the claimant ever quit her employment. The employer discharged the claimant because she was not released to work yet.

The next issue is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. She was discharged due to being unable to work.

The facts of this case raise an issue as to whether the claimant is able to and available for work effective May 18, 2014. This issue was not listed on the hearing notice. This issue is remanded to the Agency to decide. It is recommended that the claimant submit a doctor's statement regarding her ability to work as of May 18, 2014 and afterward.

DECISION:

The unemployment insurance decision dated June 12, 2014, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible. The issue as to whether the claimant is able to and available for work, effective May 18, 2014, is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/can