

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMBER M SHEFFIELD
Claimant

APPEAL NO. 10A-UI-08894-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMEDY INTELLIGENT STAFFING
Employer

**Original Claim: 05/02/10
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated June 16, 2010, reference 01, which denied unemployment insurance benefits based upon her separation from Remedy Intelligent Staffing. After due notice was issued, a telephone hearing was held on August 9, 2010. The claimant participated personally. The employer participated by Mr. Jason Neff, account manager.

ISSUE:

At issue is whether the claimant was separated from employment for disqualifying reasons.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Amber Sheffield was employed by Remedy Intelligent Staffing from June 1, 2009, until April 20, 2010, when she was separated from employment. Ms. Sheffield was assigned through Remedy Intelligent Staffing to work as a salesperson at a Mutual of Omaha call center.

Ms. Sheffield was separated from her employment with Remedy Intelligent Staffing on April 20, 2010, after the claimant had not responded as directed to numerous messages left for the claimant to contact Remedy Intelligent Staffing regarding whether the claimant was going to return to work at the client employer on April 20, 2010.

Ms. Sheffield had been unable to report to work on April 5, 2010, due to illness; and on April 6 her doctor had prescribed that the claimant remain away from work until April 20, 2010, because of the side effects of medication that the doctor was prescribing for Ms. Sheffield. The doctor's medical statement was faxed to Remedy Intelligent Staffing and the employer was willing to allow the claimant to be away from work until her expected return date of April 20, 2010, with the proviso that the claimant keep Remedy informed of her status and her intent to return.

Because of some earlier communication issues, Ms. Sheffield was specifically advised by Mr. Neff to remain in contact with the company and to keep the company apprised of her status and ability to return to work leading up to April 20, 2010. The client employer, Mutual of Omaha,

had expressed concerns to Remedy Intelligent Staffing and wanted to ensure that Ms. Sheffield intended to return to the job they were keeping open at Mutual of Omaha.

During the month of April, Mr. Neff made numerous calls to Ms. Sheffield, but his calls were not answered and Mr. Neff received no return calls for messages left. Beginning April 16, 2010, Mr. Neff repeatedly called Ms. Sheffield's residence, leaving messages requesting the claimant to contact him so that her return on April 20 could be verified not only to Remedy Intelligent Staffing but also to its client, Mutual of Omaha. Ms. Sheffield returned none of the calls.

On April 19, 2010, Mr. Neff left a message in the afternoon requesting that the claimant contact him by 4:30 p.m. or the claimant's failure to contact him by that time would be considered to be a voluntary quit and that message would be communicated to Mutual of Omaha.

The claimant received that message at approximately 9:00 or 10:00 p.m. that night but did not attempt to contact Mr. Neff, believing that her job had already been forfeited. Although Ms. Sheffield was not scheduled to begin her shift at Mutual of Omaha until 11:30 a.m. the following day, April 20, 2010, Ms. Sheffield did not attempt to contact Mr. Neff or Remedy Intelligent Staffing the morning of April 20, although the company again requested that she call that morning.

Mr. Neff had left repeated messages on the morning of April 20, asking the claimant to call him to verify her status. Ms. Sheffield did not do so. Ms. Sheffield had no further contact with this employer and the employer reasonably concluded the claimant had voluntarily quit employment.

It is the claimant's position that she thought she had no job after 4:30 on April 19, 2010 because of the message.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was discharged under disqualifying conditions.

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 evidence establishes that although Ms. Sheffield had agreed at the time that she began her medical leave of absence to keep in contact with the employer and to keep the company apprised of her condition and intent to return on April 20, 2010, she did not do so. In spite of repeated messages, Ms. Sheffield chose not to respond to the messages, leaving the employer and its client company uncertain as to whether the claimant would return or not. In desperation, the employer left the claimant a message on April 19 instructing her to call by the end of business that day and indicating that the company would consider her failure to do so to be evidence of her intention to voluntarily quit employment.

Although the claimant maintains that she did not receive the April 19 message until after the close of business and thus thought that her employment had ended, the evidence establishes that the employer continued to contact Ms. Sheffield the following morning. However, the claimant chose not to respond to those messages, which clearly indicated to the claimant that the employment relationship had not, in fact, ended. The claimant's failure to respond to reasonable and work-related directives to contact the company about her status and her intent to return to work showed a disregard of the employer's interests and standards of behavior that the employer had a reasonable right to expect of its employees under the provisions of the Iowa Employment Security Act. Benefits are denied.

DECISION:

The representative's decision dated June 16, 2010, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw