

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

SARAH R DILLEY
522 S 4TH ST #C
COUNCIL BLUFFS IA 51503

DOUGLAS GORACKE ET AL
DBA MIDLANDS LIVING CENTER LLP
2452 N BROADWAY
COUNCIL BLUFFS IA 51503-0434

Appeal Number: 04A-UI-00083-RT
OC: 11-30-03 R: 01
Claimant: Appellant (5)

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 96.5-1 – Voluntary Quitting
Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Sarah R. Dilley, filed a timely appeal from an unemployment insurance decision dated December 29, 2003, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on January 26, 2004 with the claimant participating. Mark Anderson, Administrator, and Carrie Meyer, Supervisor of Housekeeping, participated in the hearing for the employer, Douglas Goracke Et Al, doing business as Midlands Living Center LLP. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time housekeeper from July 28, 2003 until she voluntarily quit on November 20, 2003. On that day, the claimant was absent from work. She did call the employer and inform the employer that she was going to be tardy but then never showed up for work and did not call the employer to say she was not coming back to work. She did not work that day because she did not feel like coming to work because she had personal or emotional problems from home. Her boyfriend was in jail and she did not have a babysitter. The claimant did not want to continue to work but called the employer the next day because her fiancé made her but the claimant did not want to call. She asked if she still had a job and was told that she did not because of her attendance and the absence the prior day. The claimant called on that day after her shift was to start. The employer has a policy that an employee must notify the employer of an absence or tardy prior to the start of the employee's shift. The claimant had a number of occasions when she left work early as follows: November 17, 2003; November 15, 2003; November 8, 2003; November 2, 2003; October 23, 2003; October 19, 2003; October 18, 2003; October 13, 2003; October 5, 2003; September 27, 2003. On these occasions, the claimant would simply tell the employer that she was leaving work early and would do so. These occasions were from one to two hours early. The employer had informed the claimant that if she was finished with her work a few minutes before she was scheduled to finish, she could leave work early but, on these occasions, she left substantially early without permission from the employer. She gave as different reasons doctor appointments or court appearances. The claimant was also tardy on November 10, 2003 and November 6, 2003 because she overslept. The claimant was absent on October 3, 2003; September 30, 2003; September 16, 2003; and September 15, 2003. These were properly reported. On two occasions, the claimant's son had a series of doctor appointments and on two other occasions she had a miscarriage. The claimant received many verbal warnings for her attendance and a written warning on October 3, 2003 and, finally, a final written warning on October 24, 2003 indicating that the next absence or tardy could result in her discharge. At no time prior to the claimant's discharge did she ever express any concerns to the employer about any of her concerns about her working conditions nor did she ever seriously indicate or announce an intention to quit if her concerns were not addressed by the employer.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

Iowa Code Section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.25 provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa

Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer.

871 IAC 24.25(17), (21), (23) provides:

- (17) The claimant left because of lack of child care.
- (21) The claimant left because of dissatisfaction with the work environment.
- (23) The claimant left voluntarily due to family responsibilities or serious family needs.

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, (7) 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be

considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The parties concede that the claimant left her employment voluntarily. The employer maintained from the outset the claimant had quit; the claimant first testified that she was discharged and then testified that she was laid off and finally conceded that she had actually quit. The administrative law judge concludes, based upon the testimony of the parties, that the claimant did, in fact, leave her employment voluntarily. It appears to the administrative law judge that the claimant just did not care about her job and on November 20, 2003 just did not bother to come to work. She did call the employer and said she would be late but never came in to work and never called the employer back. The claimant testified that she did not go to work because she did not feel like coming to work because she had emotional problems at home. The claimant further testified that she called the employer the next day but only because her fiancé made her but not because she wanted to because she did not want to work. Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily. The issue then becomes whether the claimant left her employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that she has left her employment with the employer herein with good cause attributable to the employer. See Iowa Code Section 96.6-2. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. The claimant attempted to testify that she left her employment with the employer because she had some emotional problems at work but later testified that primarily her emotional problems were at home but there were some at work. Although the specific problems the claimant had were unrelated to her employment; no babysitter, her boyfriend was in jail and other kinds of emotional problems at home; these reasons are not good cause attributable to the employer nor is leaving employment because of a lack of childcare or dissatisfaction with the work environment or even for family responsibilities. There is not a preponderance of the evidence that claimant's working conditions were unsafe, unlawful, intolerable or detrimental or that she was subjected to a substantial change in her contract of hire. Also, even the claimant conceded that she never expressed any concerns to the employer about any of these matters prior to her quit with an opportunity for the employer to address her concerns nor did she ever indicate or announce an intention to quit to the employer if her concerns were not addressed. Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily without good cause attributable to the employer, and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

Even should the claimant's separation be considered a discharge, the administrative law judge would conclude that the claimant was discharged for disqualifying misconduct, namely excessive unexcused absenteeism. The evidence establishes that the claimant was absent on November 20, 2003 and her absence was not for reasonable cause or properly reported. It appears to the administrative law judge that the claimant simply did not want to come to work. She did call the employer and say she would be late but then never showed up for work and did not call the employer back. The claimant said something about not having a babysitter but the administrative law judge is not convinced under the evidence here that this was the reason for her absence or that it was for reasonable cause. The administrative law judge would conclude that this absence was not for reasonable cause and not properly reported. Further, the evidence establishes that the claimant left work early on numerous occasions as set out in the

findings of fact. These occasions were not just a few minutes but were substantial involving one or two hours and the evidence establishes that the claimant did not have permission from the employer to leave work early on these occasions. The claimant would simply tell the employer that she was leaving work early. The claimant testified that she was told by the employer's witness, Carrie Meyer, Supervisor of Housekeeping, that she could leave when her work was done and that that is all she was doing here but the claimant's testimony is not credible in view of the inconsistencies in all of her other testimony. The claimant was also tardy on two occasions because she overslept. The claimant had numerous verbal warnings and two written warnings for her attendance, the most recent on October 24, 2003 informing the claimant that if she had any other absences she would be discharged. Accordingly, even if the claimant's separation should be considered a discharge, the administrative law judge would conclude that the claimant was discharged for disqualifying misconduct, namely excessive unexcused absenteeism, and would still be disqualified to receive unemployment insurance benefits.

DECISION:

The representative's decision of December 29, 2003, reference 01, is modified. The claimant, Sarah R. Dilley, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits, because she left work voluntarily without good cause attributable to the employer.

tjc/b