

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MASSAH LAHAI
Claimant

APPEAL NO. 10A-UI-08468-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 05-02-10
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 10, 2010, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 30, 2010. The claimant participated in the hearing with her niece, Zoe Teeh. Tammy Kappel, RN/DON; David Mollenhoff, Human Resources Coordinator; and Lynn Corbeil, Employer Attorney, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time CNA for Care Initiatives from September 14, 2009 to April 27, 2010. The claimant worked from 10:00 p.m. to 7:00 a.m. On April 27, 2010, the employer experienced multiple call-ins for its first shift; and after the employer asked for volunteers to stay and did not receive any, it drew names from a hat and the claimant's name was selected. The claimant did not want to stay and waited until just before 8:00 a.m. when RN/DON Tammy Kappel arrived. Ms. Kappel asked the claimant to at least stay until 10:00 a.m., but the claimant refused and said she would never stay over because she had to get her children to school. Ms. Kappel told the claimant she could leave and get her children off to school and then return but the claimant said, "I will never stay over." Ms. Kappel told her they needed help to care for the residents and the claimant repeated, "I can't stay. I'll never stay," and left the building. The claimant had never been asked to stay over in the past. Ms. Kappel called the corporate office and was told they considered the claimant to have abandoned her job and her employment was terminated. The employer tried to call the claimant several times before finally reaching her April 28, 2010, and told her that her employment was terminated for walking off the job. The employer's handbook clearly states employees may be required to stay over if the oncoming shift is short-staffed and a failure to do so may result in termination. The employer would not have hired a potential employee if she was not available to work overtime and the claimant did not mention to Ms. Kappel she had a three-year-old she needed to stay

home with or find childcare for that day. The claimant had not arranged backup childcare in case of emergency and her husband did not make arrangements to go into his job later so the claimant could keep hers.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 claimant refused to stay over and work part of the oncoming shift after the employer received no volunteers and her name was drawn from a hat. The claimant stated she would not stay over and would never stay over. Due to the nature of the employer's business, it cannot leave positions uncovered, as that results in residents being unattended. The employer credibly testified it would not have hired an employee who stated she would never work over her shift if needed. In this case, the employer even offered the claimant the opportunity to go home and get her children off to school and come back but the claimant still refused to do so. She did not tell the employer she had a three-year-old child to care for. Willful misconduct can be established where an employee manifests an intent to disobey a future reasonable instruction of his employer. Myers v. IDJS, 373 N.W.2d 507 (Iowa App. 1985). Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an

intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The June 10, 2010, reference 02, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw