

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LADEMA J KEPHART
Claimant

APPEAL NO: 10A-UI-05798-ST

GENESIS DEVELOPMENT
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/07/10
Claimant: Respondent (5)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed a department decision dated April 5, 2010, reference 01, that held the claimant was forced to resign on December 21, 2009, and benefits are allowed. A telephone hearing was held on June 3, 2010. The claimant participated. Lou Ellen Brown, Administrator, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the claimant, and having considered the evidence in the record, finds: The claimant worked for the employer as a full-time, 3rd shift CMA from July 1, 2009 to December 20. The claimant was scheduled to report to work at 10:00 p.m. on December 21. The claimant became involved in a suspected child abuse issue regarding her grandson, and medical/law enforcement personnel requested she watch him on the 21st. The claimant called work to request time-off, and an employer representative advised if she failed to work her shift, she would be considered to have resigned.

The claimant called administrator Brown to advise her of the situation. When claimant requested leave from work, she was told if she failed to report it would be considered a voluntary resignation and termination. When the claimant called on the 22nd, an employer representative confirmed that her failure to report for scheduled work was a voluntary resignation.

REASONING AND CONCLUSIONS OF LAW:

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.

The administrative law judge concludes that the claimant did not voluntarily resign, but was discharged for no act of misconduct in connection from employment on December 21, 2010.

The employer refused to excuse the claimant from missing scheduled work for good cause. The claimant was trying to keep her job by requesting she be excused, and she expressed no intent to quit. The employer response of report to work or we accept your resignation is a discharge. Since the employer position this is a voluntary separation from employment is without merit, it has failed to establish job disqualifying misconduct.

DECISION:

The department decision dated April 5, 2010, reference 01, is modified. The employer discharged the claimant for no act of misconduct on December 21, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs