

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA L ACKERMAN
Claimant

APPEAL NO: 11A-UI-01870-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DALE HOWARD INC
Employer

**OC: 01/02/11
Claimant: Appellant (5)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's February 10, 2011 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant participated in the hearing. Tony Howard, the sales manager, appeared on the employer's behalf. During the hearing, Claimant Exhibit A was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is not qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits or did the employer discharge her for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in April 2008. The claimant worked full time in sales. She worked until July 12, 2010, when her doctor restricted her from working. Prior to July 12, the employer talked to the claimant about how long she planned to be off work after her baby was born. The claimant indicated six weeks because her disability insurance only covered six weeks. The employer indicated this was fine, but the claimant needed to keep the employer informed about when she planned to return to work.

The claimant's daughter was born on October 1, 2010. The claimant's doctor released her to return to work on November 15, 2010. The claimant's baby had medical issues and the claimant took her to a number of doctor appointments to find out why she was not gaining weight. The employer called the claimant a number of times and left voice messages in an attempt to set up a meeting so the employer and claimant could decide when the claimant was returning to work. When the claimant did not respond to phone calls or messages, the employer sent her text messages. On November 29, the claimant told the employer she was not able to come back to work until January. The employer responded that he wanted to meet with her in the next 7 to 10 days to get the details worked out. Even though the clamant sent a text stating,

“Sound good,” she did not respond when the employer asked when she was available to meet with him.

When the claimant had not met with the employer or called to set up a meeting by December 9, the employer left her message on December 9 asking her to call so they could set up a time and discuss her return to work. When the claimant again did not respond, the employer again called her on December 15. The employer again left a message for her to contact him to set up a meeting. The employer then told her that she needed to return to work by December 27. Although the employer again asked the claimant to return his call, she did not call him. Instead she sent him a text message. The claimant's text message informed the employer she was out of town and would not be back until Sunday, December 19. After a few more texts, the employer learned the claimant was on a family vacation. He informed her that she needed to be in his office on Monday, December 20, by 9:15 a.m. The claimant did not respond.

The claimant and her family did not return home until Monday night. The claimant did not contact the employer before Monday morning or any time after she returned home. When the claimant did not meet with employer on Monday morning or contact him by December 23, the employer discharged her on December 23 because of her repeated failure to meet with the employer and work out the details of her return to work. (Claimant Exhibit A.)

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant's failure to meet with the employer in December **before** she left for a family vacation and her repeated failure to respond to the employer's messages, in addition to her failure to contact the employer before the scheduled December 20 meeting and after she returned home amounts to an intentional and substantial disregard of the employer's interests and of the standard of behavior the employer has a right to expect from an employee. The claimant knew before July 12 that the employer expected her to return to work six weeks after her daughter was born, and if that changed the employer wanted the claimant to keep the employer be informed. After her daughter was born, the claimant failed to keep the employer informed and failed to make reasonable attempts to meet with the employer to work out the details of her return to work. Even though a newborn baby is a lot of work and the claimant took her to doctors' appointments, she was able to go on a family vacation. The claimant committed work-connected misconduct when she repeatedly failed to meet with the employer and intentionally failed to keep the employer informed. As of January 2, 2011, the clamant is not qualified to receive benefits.

DECISION:

The representative's February 10, 2011 determination (reference 01) is modified, but the modification has no legal consequence. The claimant did not intend to quit, but she committed work-connected misconduct and the employer discharged her. The claimant is disqualified from receiving unemployment insurance benefits as of January 2, 2011. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css