

**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**

**ROBIN L RING
1420 WHITCHER AVE
SIOUX CITY IA 51109**

**GULLIVERS TRAVELS INC
3441 JONES ST
SIOUX CITY IA 51104**

**Appeal Number: 05A-UI-06568-DT
OC: 05/29/05 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 Leaving
Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Robin L. Ring (claimant) appealed a representative's June 16, 2005 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Gulliver's Travels, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 12, 2005. The claimant participated in the hearing. Teresa Coughlin appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 3, 2004. She worked full time as an aide in the employer's childcare center on a 7:00 a.m. to 3:00 p.m., Monday through Friday schedule. Her last day of work was Thursday, May 26, 2005.

The claimant had been placed on a 90-day probation on April 11, 2005 due to a no-call/no-show caused by personal problems. The claimant was not to have any unexcused absences during that period.

After the claimant had completed working on May 26, 2005 at 3:00 p.m., she returned to the facility at approximately 5:45 p.m. to pick up her paycheck. She informed the administrative assistant that she would not be able to work the next day. When the administrative assistant asked for a reason, the claimant only indicated that she had to go to Colorado and that it was personal. After the claimant left the facility, the administrative assistant called Ms. Coughlin, the director, at home and informed her of the claimant's statements. Ms. Coughlin then made some calls seeing if there was someone who could cover for the claimant's morning shift on Friday.

When she was unsuccessful in attempting to find a replacement, Ms. Coughlin called the claimant at home at approximately 6:30 p.m. She also attempted to find out the reason the claimant needed to go to Colorado. The claimant acknowledged it was not a family emergency, indicating again only that it was personal. Ms. Coughlin indicated that she needed the claimant to be there in the morning and that they would try to let her leave as soon as additional coverage came in to the center. The claimant dissented, and Ms. Coughlin told the claimant that if she were not at work in the morning, she would no longer have a job. Ms. Coughlin had the assistant director call the claimant later that evening, approximately 7:30 p.m., and he reiterated Ms. Coughlin's position. The claimant also only told him that the reason for her needing to go to Colorado was personal.

The claimant had a friend in Colorado who had become ill and had gone to the hospital on Thursday. When the claimant got home from work after 3:00 p.m., there was a message from the friend's mother indicating the friend was sick and that the claimant should come. The claimant did not leave Sioux City until approximately midnight, and arrived in Colorado at approximately 9:00 a.m., by which time the friend was out of the hospital. The claimant stayed in Colorado a couple days, but then returned to Sioux City on about May 30, 2005. She did not attempt to return to her employment, understanding that she no longer had a job.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

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 that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did exhibit the intent to quit and did act to carry it out by refusing to report for work as directed. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. Leaving rather than performing assigned work as instructed is not good cause. 871 IAC 24.25(27). Even leaving for compelling personal reasons is not for good cause attributable to the employer unless the claimant sought to return to employment within ten days; in this case, the claimant has not demonstrated that the reason for her leaving was compelling or that she attempted to return to employment. 871 IAC 24.25(20). The claimant has not satisfied her burden. Benefits are denied.

In the alternative, even if the separation is analyzed as a discharge, the result is the same. The issue in this case would be whether the employer discharged the claimant for reasons establishing work-connected misconduct. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

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.

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).

The claimant's refusing to come in for at least the first portion of her shift while she was on an attendance probation for an unexcused personal reason and after she was specifically informed that her presence Friday morning was necessary shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's June 16, 2005 decision (reference 01) is modified with no effect on the parties. The claimant voluntarily left her employment without good cause attributable to the employer. In the alternative, she was discharged for misconduct. As of May 27, 2005, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

ld/sc