

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARGARET R JELLINGS**  
Claimant

**APPEAL NO. 09A-UI-01776-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SUNGHAM HOSPITALITY LLC**  
Employer

**OC: 01/04/09 R: 01  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated February 2, 2009, reference 01, that concluded she voluntarily quit employment with good cause attributable to the employer. A telephone hearing was held on February 25, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Andrea Buckley, attorney at law. Sunny Walia participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked as a front desk clerk for the employer from May 1, 2006, to December 29, 2008. The owner of the employer is Sunny Walia.

On December 30, 2008, Walia told the claimant to take a week off. The claimant had been ill and Walia was concerned about some money being missing during her shift. Walia told the claimant that he would call her on January 5, 2009, after the hotel manager came back from vacation.

Since the claimant did not have any wages for the week she was off work, she called the manager on January 5, 2009, and asked to be paid for her unused vacation on her next paycheck. The claimant never informed anyone that she was quitting and never intended to quit.

When Walia heard the claimant had asked for her vacation pay, he wrongly assumed the claimant had quit. As a result, Walia never called the claimant back to return to work.

**REASONING AND CONCLUSIONS OF LAW:**

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992). The evidence establishes Walia wrongly assumed the claimant had quit. Walia's belief that claimant quit by asking for her vacation pay was clearly unreasonable, especially when he had taken the claimant off the schedule for the week, so she had no wages coming in. The separation must be treated as a discharge.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

No willful and substantial misconduct has been proven in this case. The employer has not proven the claimant took any money from the hotel or committed any other misconduct.

**DECISION:**

The unemployment insurance decision dated February 2, 2009, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw