

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KANITRA M WASHINGTON
Claimant

APPEAL 17A-UI-00124-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SIOUX CITY HEALTHCARE LLC
Employer

**OC: 11/20/16
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 30, 2016, (reference 03) unemployment insurance decision that denied benefits based upon voluntarily quitting the employment. The parties were properly notified about the hearing. A telephone hearing was held on January 26, 2017. Claimant participated. Employer did not respond to the hearing notice instruction and did not participate. Claimant's Exhibit A was received.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a prn LPN through November 12, 2016. She began the employment working full-time in 2015, then went prn during the summer of 2016. Her last day of work was August 18, 2016. Claimant is in RN nursing school full-time and works as she was available when offered work. She has been approved for Department Approved Training (DAT) pursuant to Iowa Admin. Code r. 871-24.39(2). She attempted to report to work on November 12, 2016, per scheduler/CNA Ashley Oakley and was not allowed to clock in. (Claimant's Exhibit A) She was discharged for not accepting earlier shifts but the employer had not previously warned claimant her job was in jeopardy for any similar reasons. She did not intend to quit the employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not quit but was discharged from employment for no disqualifying reason.

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.

Iowa Code section 96.5(2)a provides:

Causes for disqualification.

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.

Iowa Admin. Code r. 871-24.32(7) provides:

- (7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

Since claimant did not intend to resign and attempted to continue working by reporting to work, the separation was a discharge, the burden of proof falls to the employer, and the issue of misconduct is examined. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given.

DECISION:

The December 30, 2016, (reference 03) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. Benefits withheld based upon this separation shall be paid to claimant. The employer's account is not chargeable while claimant is eligible for DAT.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs

NOTE TO EMPLOYER:

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<https://www.myiowauui.org/UITIPTaxWeb/>.

Helpful information about using this site may be found at:

<http://www.iowaworkforce.org/ui/uiemployers.htm> and

http://www.youtube.com/watch?v=_mpCM8FGQoY