

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RHONDA R HINTON
Claimant

APPEAL NO. 13A-UI-05761-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA JEWISH SENIOR LIFE CENTER
Employer

**OC: 04/21/13
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated May 10, 2013, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on June 20, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Verlean Rawkins participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time as a certified nursing assistant from May 21, 2009, to April 16, 2013.

The claimant was absent due to illness on April 17 and 18 with proper notice to the employer. On her next scheduled day of work on April 20, after she had dropped her 12-year-old daughter off at the babysitter, her daughter was pushed down the stairs by one of the babysitter's children. She received a call from the babysitter as she was arriving at work. She went into work and spoke with the nurse on duty and explained what had happened. The nurse said she would make arrangements to cover the shift and gave her permission to leave. She picked up her daughter and took her to the hospital emergency room where she was diagnosed with an arm fracture.

The claimant's daughter was apprehensive about returning to the babysitter on April 21 after what had happened the day before. As a result, the claimant called in and notified the employer that she would not be at work.

The claimant reported to work as scheduled on April 22. The nurse on duty asked the claimant where she was working. The claimant said she did not know because she had witnessed two CNAs going to the second floor and the first floor was fully staffed as well according to the nurse. The nurse advised the claimant to leave and call the nursing secretary the next morning. The claimant left work without punching in or out.

Management was unaware of the conversation between the claimant and the nurse on duty and when it was discovered that the claimant came and left working without punching in or out, she was deemed to have abandoned her job. She was notified on April 23 that her employment was terminated due to job abandonment.

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 permanently 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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant's testimony about her conversation with the nurse and what happened on April 22 was credible. I do not believe the claimant just decided on her own to stop at work and then leave for no reason. No intention to permanently leave employment had been proven. The separation was a discharge when the employer informed the claimant that her employment was terminated.

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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).

The unemployment insurance rules provide: "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." 871 IAC 24.32(7).

No willful and substantial misconduct has been proven in this case. The claimant's absences were for legitimate reasons and she properly notified the employer when she was absent.

DECISION:

The unemployment insurance decision dated May 10, 2013, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs