

**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**

**SLAVICA G BASIC  
314 WELLINGTON ST APT 104  
WATERLOO IA 50701**

**BLACK HAWK COUNTY  
C/O PERSONNEL DIRECTOR  
316 E 5<sup>TH</sup> ST  
WATERLOO IA 50703**

**Appeal Number: 06A-UI-05546-JTT  
OC: 10/09/05 R: 03  
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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(1) - Voluntary Quit  
871 IAC 24.26 (21) - Quit in lieu Discharge

STATEMENT OF THE CASE:

Claimant Slavica Basic filed a timely appeal from the May 25, 2006, reference 03, decision that denied benefits. After due notice was issued, a hearing was scheduled for June 14, 2006. Prior to the hearing, the claimant advised the administrative law judge that she did not wish to participate in a hearing on her appeal and that she either wanted to withdraw her appeal or have the administrative law judge enter a decision based on documents already in the Agency administrative file. Human Resources Manager June Watkins represented the employer, waived presentation of evidence and acquiesced in the administrative law judge entering a decision based on the record made at fact finding. The administrative law judge hereby takes official notice of the agency administrative file and enters the following decision.

#### FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Slavica Basic was employed by Black Hawk County as a full-time Certified Nursing Assistant from March 4, 2002 until April 18, when Co-Director of Nursing Ruth Van Gelder suspended her pending discharge. On May 2, Ms. Basic submitted her resignation in lieu of being discharged. On April 18, the employer received a credible complaint from a doctor's office that Ms. Basic had taken a resident to the doctor's office for an appointment on the wrong day and that Ms. Basic had become belligerent and attempted to intimidate the doctor's staff into seeing the resident. Ms. Basic's conduct occurred despite being advised that no doctors were in the office at the time. Ms. Basic's conduct occurred in front of the resident in her charge. The employer had a policy that required Ms. Basic to behave in a professional, courteous manner when conducting County business and Ms. Basic was aware of the policy. At the time the employer suspended Ms. Basic, the employer discovered that Ms. Basic had fraudulently documented that she had provided care to two residents when she had not provided such care. On April 12, a co-worker observed Ms. Basic intentionally disregarding established safety practices while moving residents about in the residential facility and reported the conduct to the employer. Ms. Basic had previously received multiple reprimands for disregarding the same safety procedures and the prior conduct had resulted in a resident falling. The employer made the decision to discharge Ms. Basic for continued failure to comply with established work rules.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Basic's quit was for good cause attributable to the employer. It does not.

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

871 IAC 24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

In analyzing quits in lieu of discharge, the administrative law judge considers whether the evidence establishes misconduct that would disqualify the claimant for unemployment insurance benefits.

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).

Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992). While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). An employer has the right to expect decency and civility from its employees. See Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995).

The evidence in the record establishes that Ms. Basic intentionally and fraudulently charted care on April 18, 2006 that she had not performed. The evidence indicates on the same date, Ms. Basic demonstrated belligerent behavior while conducting County business and, thereby, carelessly and/or negligently failed to follow the employer's established work rules. Ms. Basic's conduct on April 18 was part of a long-standing pattern of carelessness and/or negligence in the performance of her duties. The conduct on April 18, in and of itself, constituted substantial misconduct. The ongoing pattern of negligence and/or carelessness also demonstrated an intentional disregard of the employer's interests and constituted substantial misconduct.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that the employer could have discharged Ms. Basic for misconduct and that Ms. Basic's voluntary quit in lieu of discharge was without good cause attributable to the employer. Accordingly, Ms. Basic is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The employer's account will not be charged.

**DECISION:**

The Agency representative's decision dated May 25, 2006, reference 03, is affirmed but modified. The claimant voluntarily quit her employment without good cause attributable to the employer in lieu of being discharged for misconduct. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

jt/cs