

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMI L WEINER**

Claimant

**MASON CITY CLINIC PC**

Employer

**APPEAL NO: 13A-UI-07055-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/19/13**

**Claimant: Appellant (4)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct  
Section 96.4-3 – Able and Available  
871 IAC 24.23(6) – Doctor Report/Unable to Work

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated June 10, 2013, reference 01, that held she voluntarily quit without good cause due to a non-work-related illness or injury on May 24, 2013, and benefits are denied. A hearing was held on July 16, 2013. The claimant participated. Dana Young, Administrator, participated for the employer. Claimant Exhibits A, B AND C was received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant began employment on August 31, 2001, and last worked for the employer as a part-time receptionist on April 4, 2013. She requested and was granted FMLA for a non-work-related illness for 12 weeks. The employer sent claimant at May 9 letter stating her leave would expire May 19.

Claimant responded with an e-mail message to the employer asking for personal leave beyond the FMLA expiration period. When the employer learned from her doctor the leave remained indefinite, it terminated claimant effective May 24 as it could no longer hold her job open.

Claimant received an unrestricted work release from her doctor on May 31 to return to work.

**REASONING AND CONCLUSIONS OF LAW:**

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.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on May 24, 2013. While claimant's initial employment separation on April 4 is voluntary due to medical leave, her May 24 termination is an involuntary employment separation.

An inability to perform work due to a doctor imposed work restriction based on illness is not misconduct. Claimant wanted to return to work and her initial absence period thru May 19 was covered by an employer approved medical leave. She could not return to work by May 19 due to her doctor restriction and she made an application for personal leave from that date the employer denied. The employer decision to deny additional leave and not wait for claimant's doctor release is not based on job disqualifying misconduct.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept

suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge further concludes claimant became able and available for work when released by her doctor without restriction on May 31.

Claimant is not eligible for benefits the weeks ending May 25, and June 1 due to the date of the doctor return to work release. Claimant becomes eligible for benefits effective June 2, 2013.

**DECISION:**

The department decision dated June 10, 2013, reference 01, is modified in favor of claimant. The claimant was not discharged for misconduct on May 24, 2013. She is not eligible for benefits thru the week ending June 1, 2013 due to medical restriction. Benefits are allowed June 2 and thereafter, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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