IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

DELILAH J VANCE Claimant **MORGAN MEREDITH MFG INC** Employer	**APPEAL NO. 18R-UI-10306-B2T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 07/15/18** **Claimant: Appellant (2)**

Iowa Code § 96.4-3 – Able and Available
Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated August 9, 2018 reference 02, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on October 30, 2018. Claimant participated personally. Employer participated by Tracy Karns. Employer's Exhibits 1-6 and Claimant's Exhibits A-C were admitted into evidence.

ISSUES:

Whether claimant is able and available for work?

Whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was injured in an auto accident on or around July 1, 2018. Claimant was in contact with employer on July 3, 2018 and told employer of her accident and her intent to come back to work on July 4, 2018. Employer received a text on July 3, 2018 with a picture of her hand and a statement that there was an open gash on the hand, a stiff neck, and bumps on her forehead. Claimant asked to come back into work the next day. Employer denied claimant's request to return to work and said claimant could not return to work without a letter from a doctor clearing claimant to return. Employer stated that they recently picked up a new worker's compensation provider and had two claims on their new insurance. The provider, in an abundance of caution, stated to employer that allowing claimant to return to work without a doctor's release would risk claimant being further injured by lifting the 40 pound boxes she needed to lift at work. This, in turn, would risk employer's ability to retain their insurance.

Claimant continued to be in contact with employer and continued to try to convince employer to let her come back to work as her hand felt fine and wasn't broken and she didn't need to go to a doctor. Employer did not provide insurance coverage for employees, and claimant did not want to incur the costs of a doctor's visit. Employer suggested claimant go to a free clinic to secure a release.

Claimant came to visit employer on July 12, 2018 to pick up a check. She showed employer that her hand was able to move freely and pain free. Employer demanded claimant get a doctor's release before coming back to work. Claimant was not in contact with employer on July 13, 16, or 17. Employer terminated claimant for three days of claimant being a no-call/no-show for work.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.4(3) provides:

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

Iowa Code section 96.5(2)a provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
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> 2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
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> a. The disqualification shall continue 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(1)a provides:

> Discharge for misconduct.
>
> (1) Definition.
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> 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 Dep't of Job Serv.,* 275 N.W.2d 445, 448 (Iowa 1979).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon* supra; *Henry* supra. In contrast, 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 deemed misconduct within the meaning of the statute. Rule 871 IAC 24.32(1)a; *Huntoon* supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers, 462 N.W.2d at 737*. The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd., 570 N.W.2d 85, 96 (Iowa 1997)*. "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd., 478 N.W.2d 432, 434 (Iowa Ct. App. 1991)*.

Evaluation of this matter looks at both the reasonableness of employer's request in light of all of the circumstances, and the employee's reasons for noncompliance. *Endicott v. Iowa Dept. of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985). Claimant's actions cannot fall within "willful misconduct" if the conduct is seen as reasonable under the circumstances. *Id.* Here, claimant first alerted employer of an accident occurring outside of work. She took a day off from work, but did not go to the doctor, and did not have a medical excuse limiting the work she could do. She contacted employer alerting that she would be back in the next day and asking to work four - ten hour days. Employer's request for claimant to get a doctor's release to return to work was stated not because there was a reasonable belief of long term damage, or damage that would be exacerbated through claimant doing her job duties, but rather because of an insurance carrier's request. Had this situation been different, with claimant coming back to work, and asking to do light duty work or asking to be given other jobs while she recuperated, employer could have reasonably requested that claimant not come to work until she had secured a doctor's excuse. But employer did not do that. Not only did they initially request claimant get a doctor's release before returning to work, but they reiterated the request even when claimant came into work and showed employer that she had full mobility and strength in her hand.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning getting a doctor's note before returning to work after an accident which occurred outside of work. At no time did employer show that claimant was not able and available for work after the one day that she called off. Employer's request for claimant to get a doctor's report before returning to work was an arbitrary action done because employer had recently switched workers' compensation carriers and wished to avoid being saddled with a potential additional workers' compensation claim. Employer believed that only by requesting a doctor's note could they insulate themselves from a potential lawsuit down the road. This was a business decision on the part of employer, but had no basis in medicine. Claimant repeatedly stated that she was able and available to return to work and employer placed an unreasonable hurdle for claimant's return. Employer wanted proof that claimant's hand was not broken. Claimant stated that her hand moved freely and showed this to employer a week before she was terminated. In spite of the obvious fact that claimant was recovered and ready to return to work, employer would not allow this. Claimant made a rational decision that she did not wish to go to a doctor such that she could tell a doctor she was fine and have a doctor write a note saying claimant reported she was fine. Claimant was not warned concerning this policy and not alerted that employer had changed its policies regarding people returning to work after an out-of-work injury.

The last incident, which brought about the discharge, fails to constitute misconduct because employer certainly had reason to know as of July 12, 2018 that claimant was fully recovered and able to return to work when claimant showed up for work and exhibited her hand's flexibility and range of motion. In spite of this, employer stood steadfast to their demand for a doctor's note. (It is noted that employer does not provide insurance to employees. Any costs incurred, would be borne by claimant.) Claimant had, for over a week, been in touch with employer and reiterated her willingness and ability to return to work with no restrictions. Claimant's lack of contact on July 13, 15 and 16 was caused by employer's refusal to let claimant return to work. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits. To rule otherwise would be to set up employers at any time to keep employees off from work because of imagined medical concerns. The administrative law judge cannot follow this reasoning in the absence of any concrete evidence of claimant's inability to do her job.

DECISION:

The decision of the representative dated August 9, 2018, reference 02 is reversed. Claimant was able and available to work as of July 4, 2018, and claimant's discharge was not for an act of misconduct. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Blair A. Bennett
Administrative Law Judge

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Decision Dated and Mailed

bab/scn