

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on December 5, 2000. The claimant worked full-time for the employer. The claimant had surgery on her arm in 2000 or 2001. Even after the surgery, the claimant experiences continuing pain in her arm. Since the surgery the employer assigned the claimant to work as a safety auditor, a light-duty job.

In late May 2005, the employer changed the claimant's job assignment. The new job required the claimant to climb numerous ladders throughout her shift. Before assigning the new job, the employer's physician reviewed the job description and decided the claimant could do the work. The claimant had not seen the doctor for over eight months and the job description did not accurately describe the frequency the job required an employee to climb ladders during a shift.

After a week of working at the new job, the claimant's arm hurt. The claimant went to the employer's nurse on May 26 and asked for a doctor's appointment. The employer declined to make a doctor's appointment for her. On May 26, the employer suspended the claimant for allegedly swearing at a supervisor. The claimant was to return to work on June 7.

The claimant went to her own doctor on June 4. The claimant's doctor restricted the claimant from climbing any ladders. Since her arm continued to hurt and the employer would not make a doctor's appointment for her, the claimant notified the employer on June 7 she was unable to work as scheduled. One day after the claimant's attorney contacted the employer about the employer's refusal to allow the claimant to see a doctor, the employer made a doctor's appointment for the claimant on June 22. On June 23, the claimant gave the employer the doctor's statement that indicated she could only "rarely" climb ladders. The claimant then learned the employer had assessed her attendance points since June 7. As of June 23, the claimant had 28 attendance points. The employer again suspended her for having accumulated too many attendance points.

On June 24, the claimant again met with the employer and learned the employer would reduce her attendance points to 13. The employer also informed the claimant the employer had no other option than to place her on an unpaid leave of absence for a year. The leave would be effective immediately. The claimant, a single parent, needs an income and quit instead of being placed on an unpaid leave of absence.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. The facts establish the employer initiated the employment separation by informing the claimant she was being placed on an unpaid leave of absence for a year. During this year, the claimant would be unable to work for any other employer and would have no source of income. The claimant needed to work. As a result of being placed on a one-year unpaid leave, the employer effectively discharged the

claimant. By submitting her resignation, the claimant made it possible for her to look for work and obtain other employment during a time the employer had already decided she could not work.

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 Department of Job Service, 321 N.W.2d 6 (Iowa 1982). 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. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The evidence indicates the employer decided to place the claimant on an unpaid leave because the employer was unable to accommodate her work restriction of rarely climbing a ladder. While the employer may have business reasons for discharging or creating the claimant's unemployed status, the claimant did not commit work-connected misconduct. Therefore, as of August 14, 2005, the claimant is qualified to receive unemployment insurance benefits.

#### DECISION:

The representative's September 7, 2005 decision (reference 01) is affirmed. The employer effectively discharged the claimant by placing her on a year's unpaid leave of absence. The reasons for the claimant's employment do not disqualify her from receiving benefits. As of August 14, 2005, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/pjs