

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHERYL PENNING

Claimant

APPEAL 20A-UI-00834-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRESTAGE FOODS OF IOWA LLC

Employer

OC: 01/05/20

Claimant: Appellant (4)

Iowa Code § 96.5-2-a – Discharge for Misconduct

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Cheryl Penning (claimant) appealed a representative's January 24, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits after a separation from work with Prestage Foods of Iowa (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 12, 2020. The claimant participated personally. The employer participated by Pamela Webster, Director of Human Resources; Sarah Adams, Human Resources Manager; and Amanda Daily, Attendance, Leave, and Management Coordinator.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason and whether the claimant was able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 3, 2019, as a full-time production team member. She last appeared for work on October 24, 2019.

On October 28, 2019, the Human Resources Manager (HRM) met with the claimant with regard to the claimant's request for medical leave from October 28 to December 28, 2019, for a non-work-related condition. The claimant understood she was to take papers to her doctor, get a signature, and return the documents to the employer in order to be approved for medical leave.

The HRM repeatedly called the claimant to request the medical documentation. She had no problems reaching the claimant. The HRM understood the claimant had transportation issues and indicated the employer would e-mail documentation to her for her signature once the doctor's information was received. The HRM told the claimant she did not need to report her absences in the future. The claimant thought her sixty-day leave was approved.

On November 8, 2019, the employer received documentation from the claimant's physician and her leave paperwork was in order. The employer only needed the claimant's signature on papers regarding payment for insurance during leave. The HRM did not call the claimant or email the papers to the claimant. It did not send the documents by certified mail or warn the claimant of termination by certified mail.

The employer called the claimant's number and left voice mails on November 8, 11, 14, 18, and 28, 2019. The claimant's cellphone broke and she did not receive any calls from the employer. The employer sent the claimant an email on November 18, 2019, which the claimant did not receive.

When the claimant did not hear from the employer, she contacted the employer on December 10, 2019. The employer told her she had only twenty days to sign documentation after an unknown date. The claimant did not sign the papers within the time period and was terminated.

The claimant last saw her physician on January 14, 2020. Her doctor did not give her a written release to return to work. The claimant does not drive. She can walk or take a bus to work if she has money.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

Iowa Code section 96.5(1)d provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Where an employee did not voluntarily quit but was terminated while absent under medical care, the employee is allowed benefits and is not required to return to the employer and offer services pursuant to the subsection d exception of Iowa Code section 96.5(1). *Prairie Ridge Addiction Treatment Services v. Jackson and Employment Appeal Board*, 810 N.W.2d 532 (Iowa Ct. App. 2012).

The claimant left work due to an injury under the advice of her physician. The employer consented to her leaving until it terminated her on December 10, 2019, while she was absent

under medical care. The claimant was discharged but the employer did not provide sufficient evidence of misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

The next issue is whether the claimant was able and available for work. For the following reasons the administrative law judge concludes she is not.

Iowa Admin. Code r. 871-24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

When employees are medically unable to perform work, they are considered to be unavailable for work. The claimant has not been released to return to work. She is considered to be unavailable for work as of December 3, 2019. The claimant is disqualified from receiving unemployment insurance benefits.

DECISION:

The representative's January 24, 2020, decision (reference 01) is modified in favor of the appellant. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible. She is considered to be unavailable for work as of December 3, 2019, and is disqualified from receiving unemployment insurance benefits.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs