

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BROOKELYN M RASMUSSEN
Claimant

APPEAL 18A-UI-05558-DG-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BERTCH CABINET MFG INC
Employer

**OC: 12/24/17
Claimant: Appellant (2R)**

Iowa Code § 96.5(2)a – Discharge/Misconduct
Iowa Code § 96.5(1)d – Voluntary Quitting/Illness or Injury

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated May 11, 2018, (reference 04) that held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on June 6, 2018. Claimant participated personally. Employer participated by Mitzi Tann, Human Resources Director. Employer's Exhibits 1-2 were admitted into evidence.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge her for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant began working for employer on December 23, 2017, as a full-time face frame apprentice.

On or about March 9, 2018, claimant notified employer that she was suffering from an injury or illness that made it impossible for her to work. Claimant sought medical attention and claimant's physician did excuse claimant from working while she was undergoing treatment. Employer told claimant that it would grant her a leave of absence that would end in Six weeks. Claimant continued with her treatment and expected to return to work at the end of her short-term leave period.

At the end of claimant's short-term leave period it appeared that claimant was not available to work. Employer did not want to hold claimant's position open any longer, so it decided to terminate her employment on April 23, 2018. Claimant was notified in writing on that date that her employment was terminated effectively immediately.

Claimant is still in treatment and has not found suitable employment as of the date of this hearing.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not quit but was discharged for no disqualifying reason.

Iowa Code section 96.5(1)d 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. 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.

Iowa Admin. Code r. 871-24.25(35) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- a. Obtain the advice of a licensed and practicing physician;
- b. Obtain certification of release for work from a licensed and practicing physician;
- c. Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- d. Fully recover so that the claimant could perform all of the duties of the job.

Disqualification from benefits pursuant to Iowa Code § 96.5(1) requires a finding that the quit was voluntary. *Geiken v. Lutheran Home for the Aged Ass'n*, 468 N.W.2d 223, 226 (Iowa 1991). An absence is not voluntary if returning to work would jeopardize the employee's health. A physician's work restriction is evidence an employee is not medically able to work. *Wilson Trailer Co. v. Iowa Emp't. Sec. Comm'n*, 168 N.W.2d 771, 775-6 (Iowa 1969).

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 Servs. v. Jackson and Emp't Appeal Bd.*, 810 N.W.2d 532 (Iowa Ct. App. 2012).

The claimant is not required to return to the employer to offer services after the medical recovery because she has already been involuntarily terminated from the employment while under medical care. Although an employer is not obligated to provide light duty work for an employee whose illness or injury is not work related, unless reasonable accommodation can be offered, the involuntary termination from employment while under medical care was a discharge from employment. Thus, the burden of proof shifts to the employer.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(7) provides:

(7) *Excessive unexcused absenteeism.* Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions.

Pierce v. Iowa Dep't of Job Serv., 425 N.W.2d 679 (Iowa Ct. App. 1988). Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. Iowa Admin. Code r. 871-24.32(7); *Cosper*, supra; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007).

Although an employer is not obligated to provide light duty work for an employee whose illness or injury is not work related, unless reasonable accommodation can be made, the involuntary termination from employment while under medical care was a discharge from employment. In spite of the expiration of the leave period, since claimant was still under medical care and had not yet been released to return to work without restriction as of the date of separation, no disqualifying reason for the separation has been established. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The May 11, 2018, (reference 04) unemployment insurance decision is reversed. The claimant did not quit but was discharged for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

REMAND: The issue of whether the claimant was able and available for work beginning on April 23, 2018 is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/scn