

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MYRIA M TROTTY
Claimant

APPEAL NO. 12A-UI-13771-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARKETLINK INC
Employer

OC: 10/07/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated November 14, 2012, reference 01, which denied unemployment insurance benefits finding that the claimant voluntarily quit work due to a work-related medical condition. After due notice was provided, a telephone hearing was held on December 18, 2012. Claimant participated. The employer participated by Ms. Amy McGregor, Human Resource Manager. Employer's Exhibits One through Nine were received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for intentional misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Myria Trotty began her employment with Marketlink Inc. on May 21, 2012. On August 13, 2012 the claimant was injured at work. The claimant reported the injury and was referred to the company's insurance carrier's physicians for examination and treatment. Ms. Trotty did not agree with the restrictions or treatment being given by the company doctors and also visited her personal physician about her ongoing back problems that had been cause by the work injury.

The claimant was initially allowed to return to work by the company's doctor on August 31, 2012, however, the claimant continued to have back pain and called into work on a daily basis for an extended period of time indicating that she was unable to work due to her medical condition. The claimant had been initially informed that time away from work due to her injury would not be counted against her on the company's attendance policy. On September 19, 2012 the claimant was working but left work early due to back pain. She was informally warned that she must follow the company's doctor's orders to return to work with limitations.

When the claimant returned to work she found that her supervisor was attempting to follow the doctor's limitations that prohibited the claimant from sitting for prolonged periods by having the claimant stand to do her work. Ms. Trotty believed that the prolonged standing also was a

violation of the work limitations and repeatedly informed her supervisor of the issue. Ms. Trotty was warned on October 1, 2012 that she was exceeding the permissible number of attendance infractions and if she left work early or did not report for scheduled work she would be subject to discharge. Because of continued pain that day the claimant left her work approximately two and one-half hours before the end of the shift. The claimant went to a doctor and provided a doctor's note the following morning but nonetheless was discharged from work.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

871 IAC 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 this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Conduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The Supreme Court in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is one form of job misconduct. The Court held that the absences must be both excessive and unexcused and that the concept includes tardiness, leaving early, etcetera. The court further held, however, that absence due to illness or other excusable reasons are deemed excused if the employee properly notifies the employer.

In this matter the evidence in the record establishes that Ms. Trotty and her employer were having an ongoing dispute about whether the claimant was able to return to work and if so with what restrictions. The claimant maintained that she continued to suffer back pain and was unable to work for those reasons. The claimant had initially been told that absences because of her work injury would not be held against her. Subsequently the employer informed the claimant that the absences were being held against her and that future absences could result in her termination from employment. The claimant again left work early on October 1, 2012 after informing her supervisor that it was necessary for the claimant to leave because of continuing back pain. The claimant visited a doctor that evening and provided a doctor's note the following day to verify that she had left work on October 1, 2012 for a medical reason. The claimant was nonetheless discharged from employment.

The question before the administrative law judge is not whether the employer has a right to discharge an employee for these reasons but whether the discharge is disqualifying under the provisions of the Employment Security Law. While the decision to terminate Ms. Trotty may have been a sound decision from a management viewpoint, the administrative law judge concludes that the claimant's last absence was due to illness or injury and was properly reported to the employer and verified by the claimant when she reported the following day when she supplied a doctor's note covering her absence from work on October 1, 2012. The claimant had not been previously been discharged because the employer initially did not count her attendance infractions against her and the claimant was not discharged because she had refused to sign previous warnings. She was discharged based upon her leaving employment on October 1, 2012. The administrative law judge concludes that the final incident that caused the claimant's discharge took place under nondisqualifying conditions. Benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated November 14, 2012, reference 01, is reversed. The claimant was discharged under nondisqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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