

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIANNE M EDDY
Claimant

APPEAL NO: 09A-UI-10039-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DIAL SILVERCREST CORP
Employer

OC: 05/24/09
Claimant: Appellant (2/R)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Dianne M. Eddy (claimant) appealed a representative's July 6, 2009 decision (reference 02) that concluded she was not qualified to receive benefits, and the account of Dial Silvercrest Corporation (employer) would not be charged because she voluntarily quit her employment for reasons that do not qualify her to receive benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 29, 2009. The claimant participated in the hearing with her witness, Kathleen Hansen, her mother. Michael Hunter, the executive director, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on May 29, 2007. When the claimant interviewed for a job as a nurse's aide, she told the employer about her medical condition that she believed was under control. The employer hired the claimant knowing she had a medical condition.

Initially, the claimant did not have any problems at work. For the last several months the claimant worked, she started having multiple seizures during a week. The employer tried to accommodate the claimant's medical situation by having her work in laundry. This was not successful. As a result of the claimant's multiple seizures, the employer became concerned about the residents' safety while in the claimant's care. The last day the claimant worked, May 23, 2008, she had a seizure. Although the claimant had a neurologist, she understood the employer instructed her to see her family physician for an opinion as to whether the claimant could perform her work as a nurse's aide. The claimant's family physician contacted the claimant's neurologist. As a result of the paperwork submitted by her family physician, the employer gave the claimant a medical leave of absence under the Family Medical Leave Act. The claimant's leave of absence ended in late August or early September 2008.

The claimant established a claim for benefits in late May 2008. The employer did not protest her receipt of benefits. When the employer completed a form for the claimant's receipt of food stamps in May 2008, the employer indicated the claimant was not working for medical reasons.

Although the claimant understood her neurologist felt she could work as a nurse's aide, the neurologist submitted a doctor's statement to the employer on August 7, 2008, indicating the claimant could resume all her work duties, but she should not be left alone while working. When the claimant's leave of absence ended, she asked the employer about returning to work. Since her neurologist indicated she could not be left alone, the employer did not have any work for her to do that satisfied that work restriction.

When the claimant established a second benefit year during the week of May 24, 2009, the employer protested this claim.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. As of May 23, 2008, the claimant was on a leave of absence that she consented to by having her family physician file the appropriate documents with the employer. When her leave of absence ended, the claimant's neurologist released the claimant to work as long as she was not left alone. The employer knew about this work restriction and did not have a job available for the claimant to do when her leave of absence ended. Since the claimant offered to return to work, the facts show she had no intention of quitting her employment. The law presumes a claimant is considered laid off from work and eligible for benefits when an employer fails to reemploy a claimant at the end of a leave of absence. 871 IAC 24.22(2)(j). Based on the facts in this case, the employer laid off the claimant after her leave of absence ended and she offered to return to work. Based on the reasons for her employment separation in late August or early September 2008, the claimant is qualified to receive benefits.

The administrative law judge noted that as of the date of the hearing, the claimant has not earned \$250.00 since she established her first benefit year in late May 2008. As a result, she has not satisfied the second benefit year eligibility condition to receive benefits as of May 24, 2009. As of the date of this decision the claimant is not eligible to receive benefits until she earns \$250.00 from insured employment.

Since the claimant was on a medical leave of absence as of May 25, 2008, there is a potential issue of whether she was able to work and eligible to receive benefits during her leave of absence. This issue is remanded to the Claims Section to investigate and determine.

DECISION:

The representative's July 6, 2009 decision (reference 02) is reversed. The claimant did not voluntarily quit her employment. Instead, when the employer did not have any work for her when her leave of absence ended, the employer effectively laid her off from work for reasons that do not constitute work-connected misconduct. Therefore, the reasons the claimant's late August or early September employment separation do not disqualify her from receiving benefits. The employer's account may be charged for benefits paid to the claimant. At this time the claimant has not satisfied the second benefit year eligibility requirement of earning \$250.00 since May 25, 2008, and she is not currently eligible to receive benefits based on the claim she

established during the week of May 24, 2009. An issue of whether the claimant was able to and available for work while she was on a medical leave of absence in 2008 is remanded to the Claims Section to investigate and determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css