

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PATRICIA A WILCOX**  
Claimant

**APPEAL NO: 11A-UI-01150-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA FLUID POWER INC**  
Employer

**OC: 12/26/10**  
**Claimant: Appellant (4)**

Iowa Code § 96.5(2)a – Discharge  
Iowa Code § 96.4(3) – Ability to and Availability for Work

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's January 20, 2011 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant participated in the hearing. Valerie Burns, the human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits because the employer discharged her for nondisqualifying reasons, but she is not eligible to receive benefits as of December 26, 2010, because her work restrictions make her unavailable for work.

**ISSUES:**

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

With her work restrictions is the claimant able to and available to work?

**FINDINGS OF FACT:**

The claimant started working for the employer in April 2008. After the claimant experienced severe back pain, her physician restricted her from working as of July 14, 2010. The claimant was granted a medical leave (FMLA) from July 13 to October 5, 2010. The claimant's physician had not released the claimant to return to work by October 5, 2010.

When the claimant did not return to work when her leave of absence ended, the employer ended her employment. The employer informed the claimant she was terminated in an October 11 letter. The employer terminated the claimant's employment as of October 5, 2010.

The claimant's physician told the claimant in late December she could work with restrictions. The claimant did not obtain a written work release until January 11, 2011. The January work restrictions could be permanent restrictions. The restrictions include no lifting, pushing or

pulling over ten pounds, no repeated lifting over ten pounds, no repeated bending, lifting, twisting, or reaching, no repeated climbing and cannot sit for more than 20 minutes at a time.

The claimant established a claim for benefits during the week of December 26, 2010.

**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. The facts do not establish that the claimant intended to quit her employment. Instead, she was restricted from working as of July 14, 2010. When her leave of absence ended on October 5, the claimant had not been released to work. When the claimant was unable to return to work, the employer ended her employment as of October 5, 2010. For unemployment insurance purposes, the employer discharged the claimant.

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 employer established business reasons for ending the claimant's employment when for medical reasons she was unable to return to work on October 5, 2010. Inability or incapacity to work does not constitute work-connected misconduct. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. Therefore, as of October 5, 2010, the claimant is qualified to receive benefits, if she meets all other eligibility requirements.

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code § 96.4(3). The claimant's work restrictions as of January 2011 unduly limit the claimant's availability for work because she is essentially looking for a tailor-made job that allows her sit no more than 20 minutes at a time. Even though the claimant has 20 to 25 years of office work experience, there is only one job she had in Michigan that could accommodate her current work restrictions. Based on the claimant's current work restrictions and the lack of work that could accommodate these restrictions, the claimant cannot at this time be held eligible to receive benefits. Therefore, as of December 26, 2010, the claimant is not eligible to receive benefits because she has restricted her availability to a tailor-made job. The claimant's ineligibility remains until she reopens her claim and establishes her eligibility to receive benefits.

**DECISION:**

The representative's January 20, 2011 determination (reference 01) is modified in the claimant's favor. The claimant did not voluntarily quit her employment. Instead, the employer discharged her for reasons that do not constitute work-connected misconduct. As of October 5, 2010, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge. The claimant is not, however, eligible to receive benefits because her work restrictions, which may be permanent, do not make her available for work. Instead, her work restrictions unduly restrict the work she is available to do and she is looking for a tailor-made job. Therefore, as of December 26, 2010, the claimant is not eligible to receive benefits. If the claimant's work restrictions change, she can reopen her claim and establish her eligibility to receive benefits. She may become eligible to receive benefits if she can establish she is not looking for a tailor made job.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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