

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRACY L MILLER
Claimant

APPEAL NO. 13A-UI-01207-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 12/30/12
Claimant: Appellant (2R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated January 28, 2013, reference 01, which denied unemployment insurance benefits finding that the claimant voluntarily quit work. After due notice was provided, a telephone hearing was held on March 4, 2013. The claimant participated. The employer participated by Ms. Mary Eggenburg and Ms. Mary Fields. Employer's Exhibit One was received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with her work.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Tracy Miller was employed by The University of Iowa from March 9, 1981 until she was discharged from employment on January 1, 2013. Ms. Miller held the position of full-time clerk 3 and was paid by salary.

Ms. Miller was discharged effective January 2, 2013 because health problems prevented her from performing her required duties as a clerk 3 in the University's hospital dentistry department. The University classified the claimant's separation to be for "health reasons." (See Employer's Exhibit One).

The employer was aware of Ms. Miller's medical issues but made a management decision to separate the claimant from employment when her health/psychological condition that had been medically verified prevented her from performing at the level of competence needed by The University of Iowa Hospitals and Clinics.

REASONING AND CONCLUSIONS OF LAW:

The first question before the administrative law judge is whether the claimant voluntarily quit employment or was discharged by the employer. The evidence in the record establishes the

claimant did not chose to leave her employment but was discharged by the employer and the discharge was verified by a letter sent to the claimant on January 7, 2013. The question before the administrative law judge then becomes whether the claimant was discharged for intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. She was 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 bears the burden of proof in establishing disqualifying misconduct. 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 evidence in the record establishes that the claimant was discharged when she was unable to perform her duties at the level of competency expected by the employer because of a medical/psychological condition which prevented the claimant from performing to her employer's expectations. A discharge for these reasons is nondisqualifying.

The question before the administrative law judge is not whether the employer had a right to discharge this employee for these reasons but whether the discharge is disqualifying under the provision of the Employment Security Law. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, for the above-stated reasons the administrative law judge concludes that the claimant was discharged under nondisqualifying conditions. Unemployment insurance benefits are allowed providing the claimant meets all other eligibility requirements of Iowa law. The administrative law judge notes that there may be an issue regarding whether the claimant is able and available for work. This issue is remanded to the agency for investigation and the issuance of an appealable decision.

DECISION:

The representative's decision dated January 28, 2013, 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. The issue of whether the claimant is able and available is remanded for investigation and determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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