

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HAFIZA BUREKOVIC
Claimant

APPEAL NO: 12A-UI-05891-DW

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANKENY HEALTH CARE ENTERPRISES
Employer

OC: 04/22/12
Claimant: Appellant (2/R)

Iowa Code § 96.5(2)a – Nondisqualifying Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's May 11, 2012 determination (reference 01) that disqualified her from receiving benefits and she 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. Jenessa and Carl Koedam appeared on the employer's behalf. Azra Sikiric interpreted the hearing. Hermin Burekovic observed the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits based on the reasons for her employment separation.

ISSUE:

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?

FINDINGS OF FACT:

The claimant started working for the employer in April 2006. She worked as a full-time dietary aide.

On January 9, 2012, the claimant had problems breathing at work. The employer gave her permission to leave work early. The claimant immediately went to an emergency room. From the emergency room she was transferred to Iowa City for surgery. The claimant was not released from the hospital until January 19, 2012. The claimant's daughter kept the employer informed about the claimant's health issues.

Even though initially there was an issue with the employer receiving medical documentation that was needed for the claimant to be granted a medical leave of absence, the employer authorized the claimant to be on a leave of absence from January 11 through April 12, 2012. In accordance with the Family Medical Leave Act, the employer guaranteed the claimant's job until April 12, 2012.

The claimant's physician had not released the claimant to return to work by April 12, 2012. When the claimant could not return to work on or about April 12, the employer could no longer guarantee her a job. The employer encouraged the claimant to reapply when she was released to work by her physician. The claimant's physician released the claimant to work on June 10, 2012.

The claimant established a claim for benefits during the week of April 22, 2012.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause 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 voluntarily quit her employment. Instead, health issues resulted in the claimant having surgery and being unable to work as of January 10, 2012. The employer granted the claimant a leave of absence under the Family Medical Leave Act. This meant that if the claimant was released to return to work on or before April 12, 2012, she had continuing work with the employer. Unfortunately, the claimant was not released to return to work by April 12. The claimant's employment then ended because she was not able to work. For unemployment insurance purposes, the employer initiated the employment separation and 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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

When a claimant's job ends because she is unable to work, the claimant has not committed work-connected misconduct. Based on the reasons for her April 19, 2012, employment separation, the claimant is qualified to receive benefits.

Since the claimant's physician did not release her return to work until June 10, 2012, the issue of the claimant's ability to or availability for work prior to June 10 will be remanded to the Claims Section to determine. As of June 10, the claimant is qualified to receive benefits and able to and available for work.

DECISION:

The representative's May 11, 2012 determination (reference 01) is reversed. The claimant did not voluntarily quit her employment. Instead, the employer ended the claimant's employment when she had not been released to return to work by the end of her medical leave on April 12, 2012. The reasons for the claimant's April 19 employment separation do not disqualify her from receiving benefits. The employer's account is subject to charge.

Since the claimant's physician released the claimant to return to work on June 10, 2012, she is qualified to receive benefits and is able to and available for work as of June 10, 2012. From April 22 through June 9, there is an issue of whether the claimant is able to and available for work. This issue of whether the claimant is eligible to receive benefits from April 22 through June 9, 2012, is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs