

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PEGGY MALLORY MANNING**

Claimant

**APPEAL NO: 12A-UI-12699-S**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST ASSET MANAGEMENT INC**

Employer

**OC: 09/23/12**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated October 11, 2012, reference 01, that held she voluntarily quit without good cause on May 25, 2012, and benefits are denied. A hearing was held in Des Moines, Iowa on December 4, 2012. The claimant participated. The employer did not participate.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The claimant began employment on June 5, 2007, and last worked for the employer as a full-time “validator” about late March 2012. The claimant was granted FMLA by the employer on January 23, 2012 to care for her husband who had been diagnosed with stage four Cancer. Claimant was allowed to take intermittent leave when required.

The claimant was at work on an intermittent basis thru March when the employer advised it was no longer necessary to come into work. Claimant contacted the employer about her work status prior to the FMLA expiration date of May 25. She let the employer know she desired continuing employment. Her husband died on June 12 and an employer representative gave her an envelope with her accrued vacation pay. She was advised she could stay off work thru a two-month grieving process and re-apply for her job during a two-day period.

On or about July 25 claimant contacted the employer requesting to return to work, but no job was available at that time. She continued her effort to return until late September when she learned the employer had filled jobs in other states and nothing was available for her.

The employer failed to appear for the hearing.

## **REASONING AND CONCLUSIONS OF LAW:**

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.

The administrative law judge concludes the employer has failed to establish claimant was discharged for misconduct in connection with employment on May 25, 2012. The employer failed to participate in this hearing and offer evidence of job disqualifying misconduct.

Claimant was off work on leave thru May 25 with a two-month extension for the grieving period. The employer terminated her employment at the end of the leave and failed to provide her with a job though she made it clear she wanted to continue employment.

**DECISION:**

The department decision dated October 11, 2012, reference 01, is reversed. The claimant was not discharged for misconduct on May 25, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs