

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHLYNN K VULGAMOTT
Claimant

APPEAL NO: 18A-UI-11061-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRO INC
Employer

OC: 10/21/18
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

Michlynn Vulgamott, the claimant, filed a timely appeal from a representative's unemployment insurance decision dated November 7, 2018, (reference 01) which denied unemployment insurance benefits, finding that the claimant was discharged on October 15, 2018 for excessive unexcused absenteeism. After due notice was provided, a telephone hearing was held on November 29, 2018. Claimant participated. Employer participated by Ms. Liura Smith, Corporate Human Resource Recruiter.

ISSUE:

Whether the claimant was discharged for work-connected misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Michlynn Vulgamott was employed by Centro, Inc. from December 18, 2017 until October 23, 2018 when she was notified by the company that she had been separated from employment. Ms. Vulgamott was employed as a full-time machine operator working 3:00 p.m. until 11:00 p.m. and was paid by the hour.

Ms. Vulgamott was notified on Tuesday, October 23, 2018 that she was being terminated from employment because the company could not accommodate light duty work limitations that were being imposed by the claimant's physician for a two week period. The light duty restriction was due to non-work related injuries Ms. Vulgamott had sustained in an automobile accident on the evening of October 17, 2018.

Because of her injuries in the car accident, her physician had limited Ms. Vulgamott from repetitive turning of her neck and extended arm lifting for two weeks. The employer's policy allows for light duty restrictions for employees who are injured on the job, but light duty work is not available to employees who are injured off the job.

At the time of Ms. Vulgamott's job separation, she had not exceeded the company's permissible number of attendance infractions under its "no-fault" attendance policy. The claimant had accumulated four attendance infraction points. Employees are subject to discharge if they accumulate seven points. One point is assessed for each day's absence if the absence is properly called in. If an employee is absent for two or more consecutive days for the same medical reason, the company assesses only one infraction point for the absence days related to that illness or injury. Employees are assessed a half point for tardiness or leaving work early. Employees receive a coaching session each time they are assessed an additional infraction point.

Ms. Vulgamott had called off work on October 22, 2018 because she was ill, and had obtained an open-ended doctor's note excusing her from work for that day and until she recuperated. Ms. Vulgamott called off work on October 23 for the same illness. She was subsequently injured in a non-work related automobile accident that evening. After the accident, Ms. Vulgamott notified the employer of the injuries she had sustained and provided a doctor's note that had been given to her by a physician who had examined her following the automobile accident. The note authorized the claimant's to return to work but imposed the light duty limitation for two weeks. The company first reassured her that she would not lose her employment. After reviewing the matter, however, the employer stated that Ms. Vulgamott was not eligible for a leave of absence because of a previous attendance violation, and informed her that she could work only if fully released because her injury was not work-related. Because the claimant would not be able to perform essential functions of her job duties, due to the light duty limitation, she was informed that she was being permanently separated from employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that Ms. Vulgamott was separated from employment for reasons that constitute work-connected misconduct. It does not. The claimant was not terminated because she had missed too much work in the past, but because she temporarily could not meet the physical standards required by the employer for the job she was assigned to.

Iowa Admin. Code r. 871-24.1 provides:

Definitions.

Unless the context otherwise requires, the terms used in these rules shall have the following meaning. All terms which are defined in Iowa Code chapter 96 shall be construed as they are defined in Iowa Code chapter 96.

24.1(113) *Separations*. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. *Layoffs*. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. *Quits*. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. *Discharge.* A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. *Other separations.* Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In the case at hand, the evidence in the record establishes that the employer separated Ms. Vulgamott because she was temporarily unable to meet the physical standards that the employer required, through no fault of her own. The employer chose not to place the claimant on a type of "inactive" status or otherwise maintain the employment relationship for a two week period until the claimant could be fully released to return to her duties. The employer made a management decision to permanently separate Ms. Vulgamott from her employment because she could temporarily not meet the physical standards required. The evidence in the record does not establish excessive, unexcused absenteeism, or intentional disqualifying misconduct on the part of the claimant, sufficient to warrant the denial of unemployment insurance benefits. The administrative law judge concludes that the claimant was terminated from employment for failure to meet physical standards under non-disqualifying conditions. Benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's unemployment insurance decision dated November 7, 2018, reference 01 is reversed. Claimant was separated from employment for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn