

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER WEMPEN
Claimant

APPEAL NO: 13A-UI-02483-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHRISTENSEN FARMS & FEEDLOTS INC
Employer

OC: 09/02/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 26, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 28, 2013. The claimant participated in the hearing. Jackie Bass, Vice-President of Human Resources and Patty Guggisberg, Human Resources Representative, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time herds person for Christiansen Farms & Feedlots from April 30, 2012 to September 7, 2012. The claimant was four months pregnant and experiencing problems with her pregnancy after several miscarriages. Around July 25, 2012, she made a comment to her pod lead Karen that the job was getting a little hard to do because of her pregnancy and stated she had talked to her doctor about finding another job that would be a little easier for her. The pod lead said that was fine and for the claimant to let her know what she decided.

On August 1, 2012, Supervisor Tim Wait approached the claimant and handed her a paper that stated, "Jen Wempen has decided to end her employment with Christensen Farms. Jen's last day will be" and the date of August 31, 2012, was filled in (Employer's Exhibit One). The parties discussed the document and the claimant stated she had not had time to look for another job yet. Mr. Wait indicated that was fine. The claimant asked Mr. Wait four times before she signed and dated the form what would happen if she did not find another job by August 31, 2012, and he repeatedly told her nothing would happen and specifically that she would not lose her job August 31, 2012, if she did not have another job by that date. He further stated that by signing the document it would count as her two-week notice if she did get a job and at the end of the

month she could sign another form that would cover her if she obtained other employment. Mr. Wait promised the claimant she would not be let go.

The claimant worked until September 6, 2012, at which time Mr. Wait and the pod lead approached the claimant and told her she needed to gather her belongings and leave the premises. The claimant asked why and was told the employer needed to fill her position. She asked about the conversation she had with Mr. Wait regarding the form she signed and he indicated it was past the time stated on the document (Employer's Exhibit One). The conversation degenerated and the pod lead called the claimant a "bitch" and Mr. Wait called her a "snot." Mr. Wait said other employees also did not want to work with the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

While the employer maintains the claimant voluntarily quit her job, the evidence establishes the claimant had no intention of leaving her position with the employer, as evidenced by the fact she continued to report to work after August 31, 2012. The claimant simply mentioned to her pod lead that she had concerns about the rigors of her job given the fact she was four months pregnant at the time and one week later, on August 1, 2012, Mr. Wait presented her with the

form stating her last day would be August 31, 2012. The claimant asked him four times what would happen if she did not find a new job by that date and he repeatedly reassured her that she would not lose her job, stating that if she did find new employment, the form would serve as her two-week resignation notice and if she did not find another job she would not lose her current position with the employer. The claimant made an error in trusting Mr. Wait as it appears he planned to use her offhand comment to the pod lead about possibly looking for a new job due to being pregnant and having her sign the form to trick her into signing what would appear to be a resignation notice. If the employer truly believed she was quitting for another job, and she did not secure other employment, there was no reason for her to leave or be told to leave. Additionally, if Mr. Wait did not tell the claimant her job would continue if she did not find another job, there would be no reason for the claimant to continue working past August 31, 2012. The claimant has demonstrated that she did not voluntarily quit her job.

The remaining issue is whether the claimant was discharged for misconduct. The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The law limits disqualifying misconduct to substantial and 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 employer did not present any evidence of misconduct on the part of the claimant. Therefore, benefits are allowed.

DECISION:

The February 26, 2013, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css