

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORA L REES
Claimant

APPEAL NO. 09A-UI-11788-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PER MAR SECURITY SERVICES
Employer

**Original Claim: 07/05/09
Claimant: Respondent (5)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Per Mar Security Services (employer) appealed a representative's August 5, 2009 decision (reference 02) that concluded Lora L. Rees (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the reason for her employment separation did not disqualify her from receiving benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 1, 2009. The claimant participated in the hearing with her witness, Cliff Rees, her husband. Craig Koerperich, the operations manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer as a part-time security guard on February 15, 2009. The employer assigned the claimant to work at Menards. The last day the claimant worked was May 7, 2009.

On May 8, the claimant's husband notified the employer that the claimant was ill and unable to work. The claimant did not call the employer because she was heavily drugged as a result of her illness. Cliff Rees kept Koerperich informed about the claimant's medical condition.

Since the claimant had not yet completed her first 90 days of employment when she became ill, she was unable to obtain a leave of absence from the employer. On June 9, the employer's corporate office told Koerperich to terminate the claimant because she had not worked for 30 consecutive days and she had not worked 90 days. On June 9, Koerperich completed paperwork that indicated the claimant's employment had been terminated as of May 8, 2009.

The claimant had surgery in mid-June. The claimant's physician did not release her to return to work until July 6, 2009. After she was released to work, the claimant contacted the employer about returning to work. Koerperich considered rehiring the claimant, but first contacted Menards to see if they would accept her as a security guard. Menards personnel indicated they preferred that the employer not assign the claimant to their business, because she had been slow when she worked before. Koerperich then informed the claimant that he did not have work available for her and asked her to turn in her uniforms.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. A claimant is not disqualified from receiving benefits when she leaves employment upon the advice of a physician because of an illness, immediately notifies the employer about the illness, and offers to return to work after recovering from the illness but the employer does not have any work for the claimant. Iowa Code § 96.5-1-d.

The facts in this case establish that the employer terminated or discharged the claimant on June 9, when the claimant had not yet been released to work by her physician. 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established business reasons for discharging the claimant. The law, however, specifically states that inability or incapacity to work or perform satisfactorily does not constitute work-connected misconduct. The employer discharged the claimant when she was ill and unable to work. The employer had business reasons for discharging the claimant, but did not establish that the claimant committed work-connected misconduct. As of July 5, 2009, the claimant is qualified to receive benefits.

DECISION:

The representative's August 5, 2009 decision (reference 02) is modified, but the modification has no legal consequence. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of July 5, 2009, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw