

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROXANNE ROSE

Claimant

APPEAL NO. 07A-UI-00419-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRINITY REGIONAL MEDICAL CENTER

Employer

**OC: 11-19-06 R: 01
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct
Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 4, 2007, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on January 30, 2007. The claimant did participate. The employer did participate through Ted Vaughn, Human Resources Manager.

ISSUES:

Did the claimant voluntarily quit her employment with good cause attributable to the employer or was she discharged for work-related misconduct?

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as an environment services worker/housekeeper full-time beginning in September 14, 1977 through November 15, 2006 when she was discharged.

The claimant was on medical leave beginning on September 23, 2005 for a non-work-related back injury. The claimant was released to return to work on October 6, 2006 with work restrictions that included no lifting over 20 pounds and the proviso that she be able to change position from sitting to standing frequently.

After being instructed by Mr. Vaughn to see another physician the claimant saw an orthopedic specialist who agreed with the restrictions she had been given earlier. The claimant kept calling Mr. Vaughn in an attempt to return to work and was finally told by his secretary that the employer had discharged her effective September 23, 2006 for being gone more than one year on non-work-related medical leave. The claimant did not learn of her discharge until November 15. The claimant had been told by Mr. Vaughn that the employer would work with her to return her to work and that the one-year absence requirement would not apply to her situation since she was such a long-term employee. The employer would not return the

claimant to work because she had work restrictions. The claimant was not released to return to work with restrictions until October 6, 2006.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.26(6)a provides:

(6) Separation because of illness, injury, or pregnancy.

b. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

The claimant was not required to return to the employer to offer services after the medical recovery because she had already been involuntarily terminated from her employment effective September 23, 2006 even though she was not notified of her discharge until November 15, 2006. Thus, the separation was a discharge.

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.

Iowa Code section 96.5-1-d provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Code section 96.5(1)(d) does not require a claimant to return to the employer to offer services after a medical recovery or release if the employment has already been terminated. Porazil v. IWD, No. 3-408 (Iowa Ct. App. Aug. 27, 2003).

Even had the claimant's short-term leave expired, the employer did not place the claimant on notice that she would lose her job by a date certain if she were not released to return to work or specify a short-term date by which she could return. Furthermore, she had not yet been medically released to return to work as of the date of separation. No misconduct has been established. Benefits are allowed.

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.23(29) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

871 IAC 24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

Inasmuch as the injury was not work-related and the treating physician has released the claimant to return to work, albeit with restrictions the claimant has established her ability to work. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The January 4, 2007, reference 02, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is able to and available for work effective October 6, 2006. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css