

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMARA J MAINE
Claimant

APPEAL NO. 09A-UI-00246-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BERRY IOWA CORP
Employer

**OC: 10/26/08 R: 02
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge
Section 96.4-3 – Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated December 30, 2008, reference 02, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on January 21, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant worked full time as a press operator for the employer from March 26, 2006, to October 5, 2008. She injured her back lifting a box at work on October 5. She left work and went to the hospital.

She was diagnosed with a ruptured disk and referred to a pain clinic for treatment. Her doctor excused her from working for three weeks to let her back heal. When she informed the employer's human resources director about the doctor's recommendation, the human resource director told the claimant that if she was not going to have surgery on his back, the employer would have to terminate her.

When the claimant filed her claim for unemployment insurance benefits during the week of October 26, 2008, she was fully able to work and had no medical restrictions.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

Work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case.

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code section 96.4-3. When the claimant applied for unemployment insurance benefits, she was able to work, available for work, and actively seeking work.

DECISION:

The unemployment insurance decision dated December 30, 2008, reference 02, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw