

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARNISHA L GLOVER**  
Claimant

**APPEAL NO. 14A-UI-03543-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 10/20/13**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Marnisha Glover (claimant) appealed a representative's March 27, 2014, decision (reference 03) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Tyson Fresh Meats (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 23, 2014. The claimant participated personally. The employer participated by Kristi Fox, Human Resources Clerk. The claimant offered and Exhibit A was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 16, 2012, as a full-time production worker. The claimant signed for receipt of the employer's handbook. The claimant suffered from work-related injuries and was released to return to work. She suffered pain in her knees and requested a medical leave of absences (LOA). The employer granted the LOA from August 29 through February 4, 2014. The claimant thought the pain in her knees was work related but the claim was denied.

On January 15, 2014, the employer sent the claimant a letter saying the claimant needed a doctor's note indicating she could return to work without restrictions on February 4, 2014. The claimant went to her physician on February 3, 2014, and obtained a doctor's note stating she could return to work. The note contained no date. The claimant provided the note to the employer. The employer told the claimant the note was not sufficient because it did not provide a date the claimant could return to work or even a date when it was written. The claimant attempted to get a note from the same doctor but was unsuccessful. She did not get a note from any other doctor. On February 13, 2014, the claimant called the night shift human resources manager and stated she would not return to work. On February 14, 2014, the employer sent the claimant a letter separating the claimant from employment.

On April 10, 2014, the claimant's physician issued her a note stating she was released to return to work without restrictions.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions and provide documentation that the claimant could return to work. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

The administrative law judge concludes the claimant is able to work.

871 IAC 24.23(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness, she is considered to be unavailable for work. The claimant was released to return to work without restrictions by her physician. She is considered to be available for work because her physician stated she was able and available for work. The claimant is not disqualified from receiving unemployment insurance benefits.

**DECISION:**

The representative's March 27, 2014, decision (reference 03) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant is able to work.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs