

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JOANN TAMAYO
1058 REGENT ST NE
CEDAR RAPIDS IA 52402

THE MAYTAG CO
c/o TALX EMPLOYER SERVICES
PO BOX 1160
COLUMBUS OH 43216-1160

Appeal Number: 05A-UI-12252-HT
OC: 11/21/04 R: 03
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Joann Tamayo, filed an appeal from a decision dated December 2, 2005, reference 02. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on December 21, 2005. The claimant participated on her own behalf. The employer, The Maytag Company, participated by Human Resources Manager Reggie Graham.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Joann Tamayo was employed by Maytag from April 30, 2001 until November 7, 2005. She was a full-time assembler.

The claimant's last day of work was Friday, October 21, 2005. On Monday, October 24, 2005, she called Human Resources Representative Jeff Anderson and said she was depressed and under stress and would not be in to work. He advised her of the company rules which required employees to have approved medical leave if an absence was more than five days. She was told to contact the third-party administrator of leave, Liberty Mutual. Ms. Tamayo did contact Liberty Mutual the that day and was told her claim had been filed.

On October 31, 2005, she went to the doctor and he diagnosed stress and depression, and approved an absence from work until November 7, 2005. On October 31, 2005, Ms. Tamayo contacted the employer and asked that the necessary forms and paperwork be sent to the doctor. It was faxed, but when the claimant checked on November 2, 2005, it had not been received. She requested the employer to fax the forms again, and this time it was received.

The doctor who had examined and diagnosed Ms. Tamayo was out of the office until November 7, 2005. She informed the employer of this, and added that the doctor would not be in until mid-afternoon on November 7, 2005, because that was when his shift began. When she checked with the doctor on that day, she was told by his office staff that he was busy but would fill out the papers as soon as possible. At approximately 9:30 p.m. that night the doctor called the claimant personally and said he had just gotten around to filling out the form but there was no one in the office to fax it to the employer. Ms. Tamayo picked up the form personally the next day but did not report to work until November 9, 2005. On that day she gave the doctor's note to the employer but was told she had been discharged effective November 7, 2005, because she had not reported for work.

The employer acknowledged that even if she had shown up for work on November 7, 2005, she would not have been allowed to return to work without the proper documentation from the physician releasing her.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant did notify the employer that she would be absent for a period of time and did contact the third-party administrator to request the leave. Her claim was filed and no information was provided to her by either Maytag or Liberty Mutual that the leave had not been approved. The primary reason for the discharge appears to be that she did not return to work on November 7, 2005, the date on which the doctor had released her. However, the employer has acknowledged that she would not have been allowed to return to work on that date if she did not have the proper documentation from her physician.

The reason the claimant did not have the documentation from her physician is that he did not fill out the paperwork in a timely manner. It was not until late at night on November 7, 2005, that he even signed the paperwork. The claimant had no control over the actions and activities of her doctor and was not in a position to supervise his conduct. Her failure to have the necessary paperwork was not due to any deliberate failure or negligent conduct on her part.

The employer has failed to establish the claimant was discharged for any willful and deliberate misconduct and disqualification may not be imposed.

DECISION:

The representative's decision of December 2, 2005, reference 02, is reversed. Joann Tamayo is qualified for benefits provided she is otherwise eligible.

bgh/kjw