

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CASEY M HENAMAN
Claimant

APPEAL NO. 11A-UI-01540-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**MERCY HEALTH SERVICES-IOWA CORP
MERCY MEDICAL CENTER-NORTH IOWA**
Employer

**OC: 12/26/10
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated January 28, 2011, reference 01, which denied benefits finding she had voluntarily quit work for reasons not caused by the employer. After due notice, a telephone hearing was held on March 7, 2011. Claimant participated personally. The employer participated by Ms. Angie Carmen, Employment Specialist.

ISSUE:

The issue is whether the claimant separated for misconduct sufficient to warrant the denial of unemployment insurance benefits and whether the claimant is able and available for work.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Ms. Casey Henaman was employed by Mercy Health Services from November 29, 2004 until September 13, 2010 when she was discharged by the employer. Ms. Henaman held the position of full-time charge entry clerk and was paid by the hour. In March 2010 Ms. Henaman went on short-term disability due to a non-work-related illness. On April 7, 2010, the claimant began an approved medical leave of absence due to her non-work-related illness. When the claimant was unable to return to work by the end of the leave of absence on September 12, 2010, she was sent a letter informing her that her employment would come to an end if she were not able to return. As the claimant was not released by her physician she could not return to work at that time and was discharged by the employer. Ms. Henaman was determined to be eligible for re-hire, however.

Ms. Henaman was not released and not able to work until January 9, 2011 when she was fully released by her physician.

REASONING AND CONCLUSIONS OF LAW:

The first question before the administrative law judge is whether the claimant was separated by the employer for reasons sufficient to warrant the denial of unemployment insurance benefits. She was not.

Iowa Code § 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). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation the employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as the claimant was medically unable to return to work, continued absence was not due to intentional disqualifying misconduct and the claimant is eligible to receive unemployment insurance benefits, providing that she meets all other eligibility requirements of Iowa law.

Iowa Code § 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".

In this matter the evidence in the record establishes that Ms. Henaman was not able to work until January 9, 2011 when she was released by her physician as the claimant was not able to work she did not meet the eligibility requirements of the Iowa Employment Security Law until that date. Benefits are allowed after January 9, 2011, provided that the claimant meets all other eligibility requirements of the law.

DECISION:

The representative's decision dated January 28, 2011, reference 01, is reversed. Claimant was discharged for no disqualifying reason. Claimant was not able to work until January 9, 2011. Benefits are allowed effective January 9, 2011, provided the claimant has met all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs