

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JODI S ROSS
Claimant

APPEAL NO. 13A-UI-14093-H2

**ADMINISTRATIVE LAW JUDGE
DECISION**

TENCO INDUSTRIES INC
Employer

OC: 11/17/13
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge/Misconduct
Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 13, 2013, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued, an in-person hearing was held on March 26, 2014 in Ottumwa, Iowa. Claimant participated. Employer did participate through (representative) Joanie Lundy, Human Resources, Connie Bakers, Nurse at Center Village. Claimant's Exhibit A was entered and received into the record. Employer's Exhibit One was entered and received into the record.

ISSUE:

Did the claimant voluntarily quit her employment without good cause attributable to the employer, or was she discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a floor aide beginning on July 16, 2012 through May 23, 2013 when she was discharged. The claimant broke her foot in a non-work related at home injury on April 20, 2013. She underwent surgery on April 29, and was told by her surgeon it would be six to eight weeks before she could return to work. On May 23, she called Ms. Lundy to check in and report on her medical condition. When the claimant called Ms. Lundy she had no intention of quitting.

The claimant had missed work prior to her foot injury due to migraine headaches. She had always properly reported her absences due to illness and had no prior discipline for any performance issues including poor attendance. The claimant had applied to the insurance company for short-term disability leave due solely to her broken foot. The claimant never made application for short-term disability due to migraine headaches. During the phone conversation Ms. Lundy told the claimant that the insurance company had denied her request for short-term disability. The insurance company never sent any notification to the claimant indicating that her short-term disability had been denied. Ms. Lundy then told the claimant that the employer was no longer going to hold her position for her and that she no longer was entitled to protection

under the Family Medical Leave Act. Ms. Lundy told the claimant that her best option was to resign so she would have a chance of being hired back by the employer when she recovered from her foot surgery. Thinking she had no choice but to resign, or be discharged, the claimant agreed to resign. The only reason the employer was going to end the claimant's employment was because she was not physically able to return to work due to her foot injury. Since her discharge from employment, the claimant has been released to return to work without any work restrictions by her treating surgeon.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for no disqualifying reason.

Iowa Code § 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(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

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.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989); see also Iowa Admin. Code r. 871-24.25(35). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). The claimant never intended to quit her employment. Ms. Lundy told her that if she did not resign and keep her status as "in good standing" with the employer, her job was eliminated and she had no FMLA protection. Under these circumstances the claimant did not voluntarily quit her employment, but was discharged for no disqualifying reason. Since claimant would not have been allowed to continue working had she not resigned, the separation was a discharge, the burden of proof falls to the employer, and the issue of misconduct is examined.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. 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 Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial."

The claimant was not able to return to work due to her off the job injury. Failure to be able to return to work under these circumstances is not job connected misconduct. The claimant had no prior discipline for any conduct or behavior, including poor attendance. The employer has not established that the claimant was discharged due to job-connected misconduct. Benefits are allowed, provided the claimant is otherwise eligible. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The December 13, 2013, (reference 01) decision is reversed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css