

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAROL A DEEDRICK
Claimant

APPEAL NO. 07A-UI-06235-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ELECTROLUX HOME PRODUCTS INC
FRIGIDAIRE**
Employer

OC: 05/28/07 R: 02
Claimant: Appellant (2R)

Iowa Code § 96.5(2)a – Discharge/Misconduct
Iowa Code § 96.5(1)d – Voluntary Leaving/Illness or Injury

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 11, 2007, reference 03, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on July 10, 2007. Claimant participated with Robby Haddaway, Union Representative for UAW Local 442. Employer participated through Mallory Russell. Employer's Exhibit 1 was received.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time operator from March 21, 2005 until February 13, 2007 when she was discharged after she was not able to return to work on regular duty after exhausting her medical leave. Her last day of work was July 14, 2006. An Iowa Workforce Development evaluation of claimant's ability to work has not been done since June 19, 2006.

Her physician has indicated she is "unable to do repetitive work" and is "not expected to return" to Electrolux/Fridgidaire. (Employer's Exhibit 1) There is no information about what, if any, work she can perform and under what restrictions. Claimant argues she is able to do sedentary work with some standing.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged 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(6)b 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:

(6) Separation because of illness, injury or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

Iowa Code § 96.5(1)(d) does not require a claimant to return to the employer to offer services after a medical recovery or release if the employment has already been terminated. *Porazil v. IWD*, No. 3-408 (Iowa Ct. App. Aug. 27, 2003). However, there is no anticipated recovery in this case but the employer initiated the separation, thus it was a discharge and not a voluntary leaving of employment.

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.

Iowa Code § 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Since inability to work is not misconduct, no disqualifying reason for the separation has been established. However, it would behoove claimant to be more active in her own medical care and communication with employer about her employment status and possibilities of working with accommodation. Claimant cannot expect employer to accept hearsay information about what her treating physician recommends and she should provide written information about her work release and/or restrictions. Benefits are allowed.

DECISION:

The June 11, 2007, reference 03, decision is reversed. The claimant was discharged for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

REMAND: The ability to work issue delineated in the findings of fact is remanded to the Claims Section of Iowa Workforce Development for an initial investigation and determination.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css