

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LASHIA K BROWN
Claimant

APPEAL NO. 06A-UI-10569-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARKETLINK INC
Employer

**OC: 10/08/06 R: 02
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 30, 2006, reference 01, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on November 13, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Carla Pearson participated in the hearing on behalf of the employer with a witness, Louise Bradley.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a telephone sales representative from February 13, 2006, to September 25, 2006. She was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were considered to have voluntarily quit employment after three working days of absence without notice to the employer.

The claimant applied for intermittent medical leave because she was receiving physical therapy due to a work-related injury she sustained at her other place of employment, Riverdale Care Center. The claimant was off work due to her back condition in August and September 2006. On September 25, 2006, the claimant reported to work with a medical release from her doctor. After she punched in, her supervisor, Louise Bradley, informed her that the medical release was not sufficient and she could not return to work until she got a doctor's statement excusing her from working from August 18 through September 22, 2006. Bradley sent the claimant home on September 25.

The claimant had filed a workers' compensation claim against Riverside Care Center. The doctor who was treating the claimant was the employer's doctor. The claimant initially had problems getting in to see the doctor. When she eventually spoke to her doctor, her doctor informed her that he would not prepare the doctor's excuse she was requesting and she would have to contact her workers' compensation attorney. The claimant called Bradley on

September 28, 2006, and left a message explaining that she was having problems get the medical information Bradley had requested.

When the claimant did not report to work on September 29, Bradley called the claimant and left a message stating she needed to speak to the claimant. When the claimant failed to report to work or call in on October 2, 3, and 4, the employer considered the claimant to have voluntarily quit employment under its policy. The claimant called Bradley on October 5, 2006, and was explaining to her the problems she was having getting the letter from the doctor. Bradley then informed the claimant that her employment had been terminated due to her absence without notice to the employer. The claimant did not intend to quit her employment and was trying to get the medical documentation the employer had requested to return to work.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992). Although there is an unemployment insurance rule that provides that a claimant is presumed to have quit employment after three days of unreported absence in violation of a work rule (871 IAC 24.25(4)), the presumption is not absolute and can be rebutted by evidence to the contrary. In this case, the claimant reported to work on September 25 and was prepared to work that day and had a medical release to work. Bradley told the claimant that she could not come back to work without a doctor's excuse covering all the days she missed. The claimant did her best to get the doctor's excuse, but her doctor for some reason was uncooperative and required her attorney to get involved. The claimant communicated her problems to the employer. The evidence is clear that the claimant did not intend to quit her job. The separation from employment must be treated as a discharge based on the claimant failing to report to work on October 2, 3, and 4 without contact the employer.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The employer treated October 2, 3, and 4 as if the claimant was scheduled to work on those days. The days cannot be considered "working days" because the employer would allow the claimant to work until she brought in the doctor's excuse, which the claimant was trying to get. No willful or substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated October 30, 2006, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw