

FINDINGS OF FACT:

Having examined all matters of record, the administrative law judge finds: Lola L. Lamb was employed by Seabury & Smith, Inc. from February 8, 2000 until August 3, 2005. She did not work after April 25, 2005 because of a medical condition.

Seabury & Smith, Inc. contracts with Concentra Integrated Services, Inc. for employee disability matters. After Ms. Lamb had exhausted her sick and FMLA leave, she was instructed to provide medical information to Concentra so that it could determine whether or not Ms. Lamb qualified for further disability payments. Through her treating physician, Ms. Lamb attempted to provide the necessary documentation to Concentra. Regardless of whatever was submitted, Concentra reported to Seabury & Smith that it was insufficient. At length, Seabury & Smith sent a letter to Ms. Lamb ordering her to report to work on August 3, 2005 or to provide yet additional documentation to Concentra. The letter stated that Ms. Lamb would be considered to have voluntarily resigned if she did not comply with the letter.

Ms. Lamb contacted her physician with a request to provide yet additional information to Concentra. She did not return to work on August 3, 2005 because she had not received a release from her physician to return to work. Ms. Lamb believed that such a release would be required for her to return to work.

The employer initiated the separation on August 3 because Ms. Lamb did not report to work and because Concentra again stated that the documentation from Ms. Lamb's physician was insufficient.

REASONING AND CONCLUSIONS OF LAW:

The first step in analyzing the evidence is to characterize the separation. While the employer characterizes it as a voluntary quit, the administrative law judge is unable to do so. To find a quit, the administrative law judge must find that the claimant intended to sever the employment relationship and carried out some act to further that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980). The evidence in this record does not reveal any intent by the claimant to sever the employment relationship. Furthermore, it establishes that she made a good faith attempt to provide the necessary medical documentation to the employer's third party disability provider. The fact that her efforts were unsuccessful does not establish a voluntary quit. The separation must be characterized as a discharge.

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.

Excessive unexcused absenteeism is misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). On the other hand, absence due to medical conditions

cannot be held against an employee for unemployment insurance purposes provided the employee properly reports the absences to the employer. See Higgins and 871 IAC 24.32(7).

The evidence establishes that Seabury & Smith, Inc. new full well why Ms. Lamb was not reporting to work. It establishes that Ms. Lamb attempted in good faith to provide necessary medical documentation to the employer's third party provider. Whether the claimant's physician's efforts were insufficient or the provider's expectations were unreasonable is immaterial to the outcome of this case. The employer ended the claimant's employment while she was absent because of a medical condition known to the employer. Benefits are allowed.

DECISION:

The unemployment insurance decision dated September 27, 2005, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

dj/kjw