

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOANNA E GRIMSTAD
Claimant

APPEAL NO. 12A-UI-13236-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

INTRUST
Employer

**OC: 10/14/12
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated October 30, 2012, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on December 5, 2012. Claimant participated. The employer participated by Ms. Nicole Ehlers, Human Resource Representative.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with her work.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Joanna Grimstad began employment with the captioned employer, doing business as Iowa Home Health Care, on February 15, 2012. Ms. Grimstad was employed as a full-time registered nurse assigned to provide in-home health care. Ms. Grimstad last worked on August 21, 2012. The claimant was unable to return to work thereafter due to a verified non-work-related medical condition. Although the claimant did not complete a leave of absence paper, she nonetheless was granted a medical leave of absence for eight weeks by her employer.

During the claimant's leave of absence the claimant's doctor determined by Ms. Grimstad was able to return to work, however, a number restrictions were imposed which included zero lifting, pushing or pulling. The employer concluded that the limitations precluded the claimant from performing the duties of her job providing in-home health care. When the claimant was unable to return to work without any limitations at the end of her eight-week leave of absence, the employer sent a letter to Ms. Grimstad informing her that she was being terminated from employment.

REASONING AND CONCLUSIONS OF LAW:

The first question before the administrative law judge is whether the claimant quit her employment or was discharged by the employer. The evidence in the record clearly establishes

that the claimant did not relinquish her position but was sent a termination letter by the employer. The second question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

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 this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Conduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In the case of Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989) the Iowa Supreme Court considered the case of pregnant CNA who went to an employer with a physician's release that limited her to lifting no more than 25 pounds. When the employer would not allow the claimant to return to work with the limitations and separated the claimant due to its policy of not providing light-duty work the Supreme Court held that the claimant became unemployed involuntarily and held the claimant eligible to receive unemployment insurance benefits provided that she met all other eligibility requirements of the law.

In the case at hand the evidence is clear that the employer made a decision to terminate Ms. Grimstad from her employment although the employer was aware that the claimant was unable to perform her duties due to a medically verifiable reason. The claimant kept the employer informed of her status and her absences leading up to her termination had been approved by the employer. The claimant's discharge was based upon the employer's policy in not allowing employees to return to work with limitations due to non-work-related reasons. While the employer's decision to terminate Ms. Grimstad may have been a sound decision from a management viewpoint, the claimant's discharge was not due to disqualifying misconduct on the part of the claimant. Unemployment insurance benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated October 30, 2012, reference 01, is reversed. The claimant was discharged under nondisqualifying conditions. Unemployment insurance benefits are allowed providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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