

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GALE L BRUMBAUGH

Claimant

APPEAL NO: 07A-UI-10550-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC

Employer

**OC: 10/14/07 R: 03
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

Section 96.4-3 – Ability to and Availability for Work

STATEMENT OF THE CASE:

Gale L. Brumbaugh (claimant) appealed a representative's November 13, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Good Samaritan Society, Inc. (employer) would not be charged because the claimant voluntarily quit her employment for reasons that do not qualify her to receive benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 7, 2007. The claimant participated in the hearing. Fred Metcalf, Wanda Hamm and Lisa Matheson appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge her for work-connected misconduct?

As of October 14, 2007, is the claimant able to and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on November 17, 2004. The claimant worked as a full-time employee in the dietary department. Mattheson supervised the claimant.

In early August 2006, the claimant was diagnosed with a medical condition. The claimant's physician restricted her from working as of August 6, 2006. The claimant informed the employer about her medical restriction. The claimant requested and received a leave of absence for 12 weeks or until November 9, 2006. The claimant also applied for and received short-term disability from September 2006 through September 2007.

When the claimant's leave of absence ended, her physician had not released her to return to work. Since the claimant was unable to work and her leave of absence had expired, the

employer ended her employment on November 9, 2006. The employer told the claimant that when she was released to work, she should contact the employer about returning to work.

On October 2, 2007, the claimant's physician released her to return to work part-time, 30 hours a week. The claimant's physician indicated she could work full-time hours in November. The claimant applied to work for the employer again, but was not hired in October because the employer had a full-time job, not a part-time job available. The claimant's physician released her to work full time as of November 13, 2007.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code sections Section 96.5-1, 2-a. The claimant did not voluntarily quit her employment on August 6, 2006. Instead, she requested and received a leave of absence. The employer ended the claimant's employment on November 9, 2006, when the claimant's leave of absence ended but the claimant was unable to return to work for medical reasons. For unemployment insurance purposes, the employer discharged the claimant on November 9, 2006.

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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established compelling businesses reasons for ending the claimant's employment on November 9, 2006. The law states that being unable to work does not constitute work-connected misconduct. The claimant did not commit work-connected misconduct. Therefore, as of October 14, 2007, when she established a claim for unemployment insurance benefits, she is not disqualified from receiving unemployment insurance benefits.

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code section 96.4-3. The law presumes a claimant is not eligible to receive benefits when the claimant is not willing (or able) to work the number of hours required to work in her occupation. 871 IAC 24.23(17). Since the claimant worked full-time for the employer and was only released to work part-time hours as of October 2, the claimant is not eligible to receive benefits until her physician releases her to work full-time hours, which occurred on November 13, 2007. Therefore, the claimant is not eligible to receive benefits for the weeks

ending October 20 through November 10. As of November 11, 2007, the claimant is eligible and qualified to receive benefits, provided she meets all other eligibility requirements.

DECISION:

The representative's November 13, 2007 decision (reference 01) is reversed. The claimant did not voluntarily quit her employment. Instead, the employer discharged her on November 9, 2006, for business reasons that do not construe work-connected misconduct. As of October 14, 2007, the claimant is qualified to receive unemployment insurance benefits based on the reasons for her employment separation. The employer's account may be charged for benefits paid to the claimant. The claimant is not eligible to receive benefits for the weeks ending October 20 through November 10 because she was only released to work part-time, not full time. As of November 11, 2007, the claimant is eligible to receive unemployment insurance benefits because she was released to work full time and established that she is able to and available for work as of this date.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs