

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAVONNE T BENSKIN

Claimant

APPEAL NO. 09A-UI-00569-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELECTRIC MOTORS OF IOWA CITY LTD

Employer

**OC: 11/02/08 R: 03
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

LaVonne T. Benskin (claimant) appealed a representative's January 8, 2009 decision (reference 01) that concluded she was not qualified to receive benefits, and the account of Electric Motors of Iowa City Ltd. (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 January 29, 2009. The claimant participated in the hearing. Monte Ohrt, the president, 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 benefits, or did the employer discharge her for work-connected misconduct?

Is the claimant able to and available for work as of November 2, 2008?

FINDINGS OF FACT:

The claimant started working for the employer in February 2001. The claimant worked as a full-time bookkeeper. The last day the claimant worked was August 1, 2008. On Sunday, August 3, 2008, the claimant was involved in an automobile accident. As a result of the accident, the claimant's back was fractured in three places.

The claimant's husband contacted the employer on August 4, 2008, and informed the employer the claimant was unable to work because she had been in an accident. The claimant's physician did not know how long she would be off work. The claimant did not talk to the employer. She understood her husband kept the employer informed about her recovery process. When the claimant's husband talked to the employer, the employer did not ask the claimant to contact the employer.

The employer sent the claimant a letter on September 25, 2008. The letter indicated the claimant's health insurance coverage provided by the employer had been cancelled because she had chosen not to be employed any longer. When the claimant received the letter, she became angry and upset about the employer cancelling her health insurance coverage. While the claimant did not contact the employer, she did contact the health insurance provider. An insurance representative told the claimant the employer would send her information about what she needed to do to continue her insurance coverage. The claimant did not timely receive this information.

The claimant's physician released her to return to work full time on October 30, 2008. The claimant did not offer to return to work because the employer had already ended her employment. The claimant established a claim for benefits during the week of November 2, 2008.

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 discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a.. The evidence shows the claimant became unable to work as on August 3, after she fractured her back in three places in an automobile accident. The claimant's physician restricted her from working. The claimant's husband notified the employer about the claimant's injury and her inability to work. The employer's September 25 letter informing the claimant her health insurance coverage had been terminated because she chose to no longer to work for the employer amounts to a discharge. Even though the claimant had not been at work since August 1, she was unable to work and had not been released to work by her physician. If the employer had concerns about when the claimant would return to work or wanted to personally talk to the claimant, the employer could have sent the claimant a letter indicating her job was in jeopardy if she did not contact the employer by a certain date. Instead, the employer incorrectly assumed the claimant was not returning to work. The facts do not establish that the claimant had any intention of quitting her employment.

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 claimant used poor judgment when she failed to make any personal contact with the employer after her accident. This does not, however, rise to the level of work-connected

misconduct. The employer also failed to inform the claimant that she needed to personally contact the employer. The employer ended the claimant's employment because she was unable to work. While the employer may have had compelling business reasons for ending the claimant's employment and terminating her health insurance coverage, the employer did not establish that the claimant committed work-connected misconduct. The law specifically states that being unable to work does not constitute work-connected misconduct. Therefore, the claimant is qualified to receive benefits based on the reasons for her employment separation.

The claimant did not establish a claim for benefits until her physician released her to return to full-time work. The claimant established that she is able to and available for work as of November 2, 2008. Iowa Code § 96.4-3.

DECISION:

The representative's January 8, 2009 decision (reference 01) is reversed. The employer discharged the claimant on September 25, 2008, for business reasons that do not constitute work-connected misconduct. The claimant established that she is able to and available for work as of November 2, 2008. Therefore, as of November 2, 2008, the claimant is qualified to receive benefits. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css