

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN D EASTIN
Claimant

APPEAL NO: 12A-UI-04068-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 02/26/12
Claimant: Appellant (4)

Iowa Code 96.5(2)a – Discharge
Iowa Code § 96.4(3) – Ability to Work

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's April 5, 2012 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant participated in the hearing. Brandi Anderson, the store manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the employer discharged the claimant for nondisqualifying reason, but the claimant is not eligible to receive benefits because she is not able to work.

ISSUES:

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

As of February 26, 2012, is the claimant able to work?

FINDINGS OF FACT:

The employer hired the claimant to work as a part-time cashier in May 2011. The claimant became ill in mid-November 2011 and was off work about a week. The claimant went to work on November 18, but again became sick and left work early. She saw her doctor again on November 18, 2011. At some point the claimant gave the employer a doctor's notice that indicated she would be off work indefinitely. The claimant did not know when she would be released to return to work.

After the claimant went back to her doctor on November 18, she called the employer to see if the employer would give her more time off. The employer was busy and told the claimant she would call her back. The employer did not call the claimant back. When the claimant did not call or report to work on November 19, the employer discharged her.

As of December 5, the claimant's doctor had not released her to return to work and she was scheduled to have some tests. In January 2012 the claimant was hospitalized for five days. As of February 26 when she established her claim and as the date of the hearing, May 3, the claimant's doctor had not released her to return to work.

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 facts do not establish that the claimant intended to quit her employment. She was ill and unable to work, but she hoped the employer would give her more time off to recover from her health issues. On November 19, the employer terminated the claimant's 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 employer asserted the claimant was discharged because she did not call or report to work on November 19. Since the employer did not have the doctor's notes the claimant gave to her in mid-November and did not have a good recollection of what happened on November 18, the claimant's detailed testimony is deemed more reliable than the employer's. The evidence indicates the employer discharged the claimant because she was unable to work because of continued health issues. The claimant did not commit work-connected misconduct. Therefore, as of February 26, 2012, the claimant is qualified to receive benefits based on the reasons for her employment separation.

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code § 96.4(3). The claimant testified that after she was hospitalized in January her doctor has not released her work. Even as of May 3, the claimant's doctor had not released her to work. Since the claimant is not currently released to work for on-going health issues, she is not eligible to receive benefits from February 26 through May 5, 2012. The claimant remains ineligible to receive benefits after May 5 until she provides the Department with a doctor's statement indicating she is released to work and what if any work restrictions she has. After the claimant provides this statement, the Claims Section will then determine if she is able to work as of the date of the doctor's statement.

DECISION:

The representative's April 5, 2012 determination (reference 01) is modified in the claimant's favor. The claimant did not voluntarily quit her employment. Instead, the employer discharged her for reasons that do not constitute work-connected misconduct. As of February 26, 2012, based on the reasons for her employment separation, the claimant is qualified to receive benefits. The employer's account is subject to charge. The claimant is not eligible to receive benefits as of February 26, 2012, because she is not able to work. The claimant is ineligible to receive benefits at least through May 5, 2012. If her doctor releases her to work after May 5, 2012, she can reopen her claim for benefits and provide her doctor's statement that indicates the date she is released to work and what if any work restrictions she has at that time. Based on this new information the Claims Section can then determine if and when she is eligible to receive benefits.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs