

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

TONYA S ECKER  
323 – 12<sup>TH</sup> ST SE  
MASON CITY IA 50401

DEVELOPMENTAL RESOURCES INC  
C/o NORTH CENTRAL HUMAN SERVICES  
102 W PARK ST  
FOREST CITY IA 50436-2132

Appeal Number: 05A-UI-05226-HT  
OC: 04/24/05 R: 02  
Claimant: Appellant (2-R)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant, Tonya Ecker, filed an appeal from a decision dated May 12, 2005, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on June 7, 2005. The claimant participated on her own behalf. The employer, Developmental Resources, Inc., participated by Area Administrator Sonney Hickman.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Tonya Ecker was employed by Development

Resources, Inc., from March 31, 2003 until April 21, 2005. She was a full-time residential counselor.

The claimant went on FMLA on January 21, 2005, due to tendonitis. Her doctor recommended she take time off and it was granted by the employer until February 28, 2005. At that time it was extended until April 15, 2005. Ms. Ecker was notified she would have to report to work on April 16, 2005, or contact Human Resources Coordinator Connie Gremmer before that date if she needed an extension. The claimant did contact Ms. Gremmer on April 1, 2005, to say she would not have any new information until her next doctor's appointment on April 28, 2005.

The claimant's 12 weeks of FMLA ended on April 15, 2005, but she did not report for work because her doctor had not released her. The employer discharged her for failing to return to work.

As of the date of the hearing the claimant's doctor has not released her to return to work for her regular job duties.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant was discharged because she was not medically able to return to work at the end of her leave of absence. This is not job-related misconduct but something beyond her control. Ms. Ecker had notified the employer she would know nothing about whether she could return to work until after April 15, 2005, so the employer knew she would not be able to return to work until after the FMLA expired. In spite of this notice, she was still discharged but disqualification may not be imposed.

The issue of whether the claimant is able and available for work in her regular occupation should be remanded for determination.

DECISION:

The representative's decision of May 12, 2005, reference 01, is reversed. Tonya Ecker is qualified for benefits, provided she is otherwise eligible.

The issue of whether the claimant is able and available for work in her regular occupation is remanded to the Claims Section for determination.

bgh/tjc