IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

PATTY KNUDSEN
Claimant

MID-STEP SERVICES INC
Employer

APPEAL NO. 07A-UI-06226-SWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/27/07 R: 01
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 15, 2007, reference 03, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on July 10, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer. Exhibit A was admitted into evidence at the hearing. After the hearing concluded, I received a packet of information from the employer stating that the employer would not be participating in the hearing due to a scheduling conflict but was offering written information. The information had not been sent to the claimant. The employer had not contacted me to request a postponement of the hearing or for permission to submit written documentation in lieu of participating in the hearing. Based on the above facts, the employer's information is not entered into evidence.

ISSUES:

Was the claimant discharged for work-connected misconduct?
Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant worked for the employer as a home and community-based services (HCBS) assistant from May 19, 2003, to November 22, 2006. The claimant was responsible for providing assistance and living skills training to mentally disabled adults. Under the employer's work rules, an employee who is ill and on leave will be considered as an employee for six months.

On November 8, 2006, the claimant injured her right shoulder in a fall at home. She continued to work with her right arm immobilized though November 22, 2006. Starting November 24, 2006, she was on an approved medical leave pending referral and evaluation by an orthopedic specialist.

The claimant was evaluated by a specialist who determined she had a right rotator cuff tear that required surgery. She had an operation to repair her right rotator cuff injury on December 19, 2006. She continued on medical leave as she recuperated from the surgery.

The claimant was examined by her doctor on January 3, 2007. Her doctor released her to return to work for the employer with the restriction that she not use her right upper extremity. The claimant had no other restrictions. She submitted the work release to the human resources coordinator, Jan Hackett, and expressed her willingness to return to work. Hackett informed her that the employer could not accommodate the restriction and she would be on medical leave until she was released without restrictions.

The claimant was re-examined by her doctor on January 31, 2007. Her doctor released her to return to work for the employer with the weight restriction of five-pound on her right upper extremity and no work with the right arm above shoulder level. The claimant had no other restrictions. She submitted the work release to Hackett, and indicated her willingness to return to work. Hackett informed the claimant that the employer could not accommodate the restriction and she would be on medical leave until she was released without restrictions.

The claimant was re-examined by her doctor on March 14, 2007. Her doctor released her to return to work for the employer with the weight restriction of ten pounds. The claimant had no other restrictions. She submitted the work release to Hackett, and indicated her willingness to return to work. Hackett informed the claimant that the employer could not accommodate the restriction and she would be on medical leave until she was released without restrictions.

The claimant was re-examined by her doctor on April 25, 2007. Her doctor released her to return to work for the employer with the weight restriction of ten pounds, no work above shoulder level for more than five minutes, and no vigorous pushing or pulling. The claimant had no other restrictions. She submitted the work release to Hackett, and indicated her willingness to return to work. Hackett informed the claimant that the employer could not accommodate the restriction and she would remain on medical leave until she was released without restrictions.

On May 24, 2007, Hackett presented a letter to the claimant stating that her employment was terminated because the six months of leave allowed under the employer's work rules was up and she had not been fully released to return to work. The claimant had never intended to quit her employment and had never informed anyone with the employer that she was quitting.

The claimant filed a new claim for unemployment insurance benefits with an effective date of May 27, 2007. As of that date, the claimant was able to work in jobs not requiring heavy lifting.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992).

The evidence is clear in this case that the claimant did not voluntarily quit her employment. Instead, the employer discharged the claimant through its letter dated May 24, 2007. The

discharge was pursuant to the employer's work rules, which require termination of an employee after six months of absence due to illness or injury. The employer terminated her because the employer believed she was not fully released to perform her job duties.

This case is like Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989), in which the Iowa Supreme Court considered the case of a pregnant certified nursing assistant (CNA) who went to her employer with a physician's release that limited her to lifting no more than 25 pounds. Wills filed a claim for benefits because the employer would not let her return to work because of its policy of never providing light-duty work. The court ruled that Wills became unemployed involuntarily and was able to work because the weight restriction did not preclude her from performing other jobs available in the labor market. Id. at 138

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 substantial and 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).

While the employer may have been justified in discharging the claimant under its policy, work-connected misconduct as defined by the unemployment insurance law has not been established. The rules specifically indicate that a discharge due to inability to perform a job is not misconduct. 871 IAC 24.32(1).

The final issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code section 96.4-3. The unemployment insurance rules provide that a person must be physically able to work, not necessarily in the individual's customary occupation, but in some reasonably suitable, comparable, gainful, full-time endeavor that is generally available in the labor market. 871 IAC 24.22(1)b. The evidence establishes that the claimant was able to perform gainful work, just not work that requires heavy lifting. There is work available in the labor market meeting such restrictions that the claimant is qualified to perform, and the claimant has been actively looking for such work in compliance with the requirements of the law.

DECISION:

The unemployment insurance decision dated June 15, 2007, reference 03, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs