

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARION A MONTGOMERY-SCOTT
Claimant

APPEAL NO. 08A-UI-06858-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BLACK HAWK COUNTY
Employer

**OC: 06/29/08 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated July 28, 2008, reference 01, that concluded the claimant voluntarily quit employment with good cause attributable to the employer. A telephone hearing was held on August 12, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Diana Mosley. June Watkins participated in the hearing on behalf of the employer. Exhibits One through Four were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as an office specialists in the treasurer's office from September 14, 1987, to May 9, 2007. After May 9, 2007, the claimant was off work with a medical excuse due to problems with fibromyalgia. The employer's human resources director, June Watkins, contacted the claimant's doctor to obtain clarification on the claimant's medical restrictions and return to work. The claimant's doctor responded that the claimant could not perform her job due to her fibromyalgia and the condition is permanent.

On June 19, 2007, Watkins informed the claimant that she was terminated because she could not perform the essential functions of an office specialist and there were no other positions available for the claimant.

After being terminated from her position with the employer, the claimant applied for social security disability but was denied benefits because she was able to perform substantial gainful work despite her medical condition. The claimant filed a new claim for unemployment insurance benefits with an effective date of June 29, 2008. The claimant's condition has improved and she has been applying for clerical positions and retail clerk position. The claimant is qualified to work in such positions and is currently physically able to perform such work.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant did not voluntarily quit her employment, she was discharged by the employer. She was discharged due to her inability to perform her job. This does not meet the definition of disqualifying misconduct.

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. There is work available in the labor market meeting her 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 July 28, 2008, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw