IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

JENNIFER J MCFARLAND Claimant **US POSTAL SERVICE** Employer	**APPEAL 14A-UI-07143-LT** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 06/15/14** **Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1)d – Voluntary Quitting/Illness or Injury

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 7, 2014 (reference 01) unemployment insurance decision that denied benefits based upon voluntarily quitting the employment. The parties were properly notified about the hearing. A telephone hearing was held on August 4, 2014. Claimant participated. Employer did not respond to the hearing notice instruction and did not participate. Claimant's Exhibit A was received.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a city carrier assistant since February 18, 2014 and was separated from employment on March 10, 2014 during her probationary period. Claimant reported to Winterset postmaster Ira Dickman on February 26 that the big toe of her right foot was painful, red, and swollen. Claimant went to a walk-in clinic about the toe pain on February 28, 2014. The doctor told her it was related to her work boots rubbing on her toe, causing a blister under the toenail and told her to stay off work a couple of days to allow healing. Claimant reported the information to Dickman on March 1. He said he would see her next week. On March 3, in response to her showing him photos of her toe, he told her he had seen worse. She worked on March 4 and pulled a muscle in her leg. Dickman offered to send her to a doctor for her leg, but said he would not for the toe. He inaccurately told her that she would not be eligible for Workers' Compensation benefits since she had not worked there long enough so she did not file a first report of injury or a contested Workers' Compensation claim.

On March 5 she still had leg cramping and Dickman gave her permission to see a physician for her leg. While there she asked Sue Olmstead, M.D. of Northwest Family Physicians in Des Moines about her toe. Olmstead told her she had an infection after the blister broke and was

within a couple of days of losing her toe. She put claimant on antibiotics and told her to stay off work the rest of the week. Claimant notified Dickman she anticipated returning to work on March 10. Dickman texted her asking how she was doing on March 7. She told him she was uncertain if the toe would be healed enough to return to work on March 10. Instead of allowing continued medical leave or offering light duty, he instructed her to turn in her resignation and return any Postal Service property (Claimant's Exhibit A). Two rounds of antibiotics and a month later, her toe nail fell off and her toe healed. Her work history includes sedentary medical and optometry office work. She was able to do this type of work while her toe healed and is seeking this type of work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not quit but was discharged for no disqualifying reason.

Iowa Code § 96.5-1 provides:

> An individual shall be disqualified for benefits:
>
> 1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Admin. Code r. 871-24.26(21) provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> (21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

Iowa Code § 96.5-1-d provides:

> An individual shall be disqualified for benefits:
>
> 1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:
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> d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.25(35) provides:

> Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer

> has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:
>
> (35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:
>
> (a) Obtain the advice of a licensed and practicing physician;
>
> (b) Obtain certification of release for work from a licensed and practicing physician;
>
> (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
>
> (d) Fully recover so that the claimant could perform all of the duties of the job.

Disqualification from benefits pursuant to Iowa Code § 96.5(1) requires a finding that the quit was voluntary. *Geiken v. Lutheran Home for the Aged Ass'n*, 468 N.W.2d 223, 226 (Iowa 1991). An absence is not voluntary if returning to work would jeopardize the employee's health. A physician's work restriction is evidence an employee is not medically able to work. *Wilson Trailer Co. v. Iowa Emp't. Sec. Comm'n*, 168 N.W.2d 771, 775-6 (Iowa 1969).

Where an employee did not voluntarily quit but was terminated while absent under medical care, the employee is allowed benefits and is not required to return to the employer and offer services pursuant to the subsection d exception of Iowa Code section 96.5(1). *Prairie Ridge Addiction Treatment Servs. v. Jackson and Emp't Appeal Bd*., 810 N.W.2d 532 (Iowa Ct. App. 2012).

Dickman's instruction to turn in her resignation was not a voluntary leaving of the employment, but a discharge. The claimant was not required to return to the employer to offer services after the medical recovery because she has already been involuntarily terminated from the employment while under medical care. Thus, the burden of proof shifts to the employer.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.,* 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional. Iowa Admin. Code r. 871-24.32(7); *Cosper*, supra; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007).

An employer is obligated to provide light-duty work for an employee whose illness or injury is work-related. Because the employer discharged claimant rather than provide light-duty work or provide a medical leave of absence, the involuntary termination from employment while under medical care was a discharge from employment without a showing of misconduct. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The July 7, 2014 (reference 01) decision is reversed. The claimant did not quit but was discharged for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

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