

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MEGAN PAYNE

Claimant

APPEAL NO: 14A-UI-06204-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC

Employer

OC: 05/11/14

Claimant: Appellant (4)

Section 96.5-2-a – Discharge
871 IAC 24.32(7) – Excessive Unexcused Absenteeism
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant appealed a department decision dated June 11, 2014 (reference 03) that held she voluntarily quit employment without good cause attributable to the employer due to a non-work-related illness or injury on April 7, 2014 and benefits are denied. A telephone hearing was scheduled and held on July 10, 2014. The claimant participated. Brenda Madison, HR Director, participated for the employer. Official Notice was taken of claimant appeal documents.

ISSUE:

The issue is whether the claimant voluntarily quit with good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The claimant was hired on October 14, 2013 and last worked as a full-time C.N.A. on April 7, 2014. The claimant had suffered abdominal pain and was under-going diagnosis/treatment for it with a scheduled biopsy for April 7. She received permission to leave work early for the appointment.

Claimant did not return to work after April 7 and she remained under doctor care. She provided medical information to the employer about her health condition on a periodic basis after her appointments. On, or about, May 12 she called HR Director Maddison about her employment status. Maddison told claimant the employer could no longer hold her job open and she was terminated. Claimant filed an online unemployment claim.

Claimant submitted a doctor statement that she was released for full duty as of May 27, 2014.

REASONING AND CONCLUSIONS OF LAW:

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(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The administrative law judge further concludes employer discharged claimant on May 12, 2014 for a continuing absence from employment due to health issues. Although claimant separated from employment due to health issues on April 7, 2014 she did not file an unemployment claim as she contemplated returning to work once she was able.

Claimant offered credible testimony that she called the employer and was told it could no longer hold her job open due to ongoing absence from work and she was terminated. The fact claimant immediately filed an unemployment claim supports this contention.

Claimant provided medical information to the employer about her absences that is for excusable reasons. Job disqualifying misconduct is not established.

Iowa Code § 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge further concludes claimant was not able and available for work from the effective date of her claim May 11, 2014 until she received an unrestricted medical release for May 27.

Claimant offered a medical statement that she was released "fit for full duty" as of May 27, 2014. She is not eligible for benefits until the date of this release. Although she has an ongoing abdominal health issue, there is no work restriction imposed.

DECISION:

The department decision dated June 11, 2014 (reference 03) is modified. The claimant was not discharged for misconduct on May 12, 2014. Claimant was not able and available for work until May 27, 2014. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/can