

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ARLENE SELLARS
Claimant

APPEAL NO: 12A-UI-09250-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 06-24-12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 20, 2012, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 27, 2012. The claimant participated in the hearing. Kris Rossiter, employment manager, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time registered nurse for Tyson Fresh Meats from March 4, 1991 to April 13, 2012. Her last day worked was September 3, 2010. She sustained three work-related injuries and filed a workers' compensation claim against the employer. That case was settled April 30, 2012, and the claimant signed a release on that date agreeing, "This release covers any and all claims, including but not limited to: Employment..." and, among other items, "not to apply for employment with Tyson Foods, Inc., or any of its plants, facilities, subsidiaries" (Employer's Exhibit One). The claimant reached maximum medical improvement and had no intention of quitting her job, but the employer chose not to accommodate her restrictions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.15-1 provides:

1. Waiver of rights void. Any agreement by an individual to waive, release, or commute the individual's rights to benefits or any other rights under this chapter shall be void. Any

agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this chapter from such employer, shall be void. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from the employer, or require or accept any waiver of any right hereunder by any individual in the employer's employ. Any employer or officer or agent of an employer who violates any provision of this subsection shall, for each offense, be guilty of a serious misdemeanor.

A party is precluded by law from waiving her rights to an unemployment hearing or unemployment insurance benefits. Consequently, the fact that the claimant signed a release does not prevent her from filing an unemployment claim or collecting unemployment insurance benefits. The case must be decided on its merits.

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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). Here the claimant clearly did not intend to quit her job but the employer chose not to allow her to return to her position. Therefore, the administrative law judge must analyze this case as a termination of employment.

The employer has the burden of proving disqualifying misconduct. 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). The claimant suffered three work-related injuries and filed a workers' compensation claim against the employer. After achieving maximum medical improvement, the employer declined to accommodate her permanent medical restrictions and terminated her employment. There is no evidence of disqualifying job misconduct on the part of the claimant. Under these circumstances, benefits shall be allowed.

DECISION:

The July 20, 2012, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw