

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANNA L RODRIQUEZ
Claimant

APPEAL NO. 09A-UI-06742-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

NATIONWIDE MUTUAL INSURANCE CO
Employer

OC: 03/15/09
Claimant: Appellant (2)

Section 96.5-1 – Voluntary Quit
Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated April 23, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 28, 2009. Claimant participated. Employer notified the Unemployment Insurance Appeals Bureau that it would not participate in the hearing. The record consists of the testimony of Danna Rodriguez and Claimant's Exhibit A.

ISSUES:

Whether the claimant voluntarily left with good cause attributable to the employer.

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant started her job with the employer on January 28, 2008. She was in training to become a customer service representative. On January 29, 2008, she began having pain similar to contractions. The claimant was approximately four months pregnant at the time. She continued to attend her training sessions but at approximately 3:00 p.m. her pain increased and she vomited in the restroom. Her employer was aware of the situation and she was allowed to go to her mother's home. She then began to hemorrhage and was rushed to the emergency room, where she eventually suffered a miscarriage. She nearly died due to the extreme loss of blood. As a result of the miscarriage, she developed severe anemia that prevented her from returning to work.

The employer was aware of the claimant's health problems and provided the necessary forms for the claimant to submit to continue her leave of absence and keep her job. The claimant's physician filled out these forms and submitted them to the employer until mid April 2008. The

claimant had tried to return to work at that time but was unable to keep working due to her anemia. At this same time, a nurse in the claimant's doctor's office told the claimant that the office would no longer fill out the form because of an outstanding balance owed to the doctor. The claimant had no money to pay the bill.

The employer required the claimant to have the necessary documentation turned in by May 15, 2008. The claimant was unable to secure the documentation from her physician despite many efforts on her part. Because the claimant did not turn in the form by May 15, 2008, she was terminated by the employer.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 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.

The greater weight of the evidence in this case established that the claimant was terminated by the employer because she was unable to provide information from her doctor concerning her

ability to return to work. The employer knew that the claimant was off work due to anemia following a miscarriage. She had been placed on a medical leave of absence. The only reason that she was terminated was because her doctor refused to provide additional documentation on her condition. The claimant had been informed by a nurse in her doctor's office that unless the claimant made payment on her outstanding medical charges, something the claimant was unable to do because she had no income, the necessary information would not be provided to the employer. The claimant tried to get the information from the doctor, but was not unsuccessful.

Given the totality of the circumstances, the employer has failed to show misconduct that will disqualify the claimant from benefits. Benefits will be awarded if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated April 23, 2009, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css