

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KERRI L HENN**  
Claimant

**APPEAL NO. 16A-UI-06333-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**L A LEASING INC**  
Employer

**OC: 05/15/16**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Kerri Henn (claimant) appealed a representative's June 3, 2016 (reference 01) decision that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with L A Leasing (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 22, 2016. The claimant participated personally. The employer participated by Emelia Leeney, Risk Administrative Assistant, and Julie White, Account Manager.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary agency. The claimant was hired on April 29, 2009. She was last assigned to work at H.W.H. as a full-time production worker starting on December 14, 2015.

In February 2016, the claimant's physician discovered a staph infection in her ankle at the site of a previous surgery. This was a non-work-related condition. The doctor said she would have to have surgery. On or about February 12, 2016, the claimant informed the employer of the situation and provided a note from her doctor indicating she could continue to work with restrictions until her surgery. H.W.H. had light-duty work available for her. The employer told her it had a policy that it would not accommodate employees with non-work-related restrictions. The employer gave her a form to complete stating she quit work. The employer said she should complete the form or be terminated for absenteeism. The claimant completed the voluntary quit form and did not work after February 11, 2016.

The claimant had surgery on February 26, 2016. Her surgeon released her to return to work without restrictions on April 13, 2016. She saw her infectious disease physician on April 21, 2016. He found her to be free of any infectious disease. On April 25, 2016, the claimant

contacted the employer and asked for work but no work was available. She asked for work three weeks in a row but none was available. The claimant filed for unemployment insurance benefits with an effective date of May 15, 2016.

### **REASONING AND CONCLUSIONS OF LAW:**

The first issue is whether the claimant voluntarily quit without good cause attributable to the employer. For the following reasons the administrative law judge concludes she did not.

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.

If an employee is given the choice between resigning and being discharged, the separation is not voluntary. The claimant had to choose between resigning and being fired. The claimant's separation was involuntary and must be analyzed as a termination.

The issue becomes whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes she was not.

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 Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide any evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's June 3, 2016 (reference 01) decision is reversed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/can