

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAYLA S SEDLOCK
Claimant

APPEAL NO. 12A-UI-10193-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

04/22/12

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Care Initiatives filed a timely appeal from a representative's decision dated August 13, 2012, reference 04, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on September 18, 2012. Claimant participated. The employer participated by Mr. David Williams, Senior Hearing Representative and Ms. Amanda Stephens, Assistant Director of Nursing.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Kayla Sedlock was employed the captioned employer from October 14, 2011 until June 29, 2012 when she was terminated by the employer. Ms. Sedlock held the position of full-time certified nurse's assistant and was paid by the hour.

The claimant was separated from her employment with Care Initiatives by the employer on June 29, 2012 after she had exhausted all leave and other time available to her under established company policies. Ms. Sedlock had last performed services for Care Initiatives on April 27, 2012. At that time the claimant had provided a doctor's note that limited the claimant's lifting to no more than 30 pounds because of her pregnancy. Ms. Sedlock was allowed to begin a maternity leave. That leave expired on June 22, 2012. Ms. Sedlock was not at that time medically authorized to return to full work without limitations. The claimant at that time was separated from her employment by her employer and told that she could "reapply" for work in the future.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

871 IAC 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 employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Conduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The Supreme Court in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is one form of job misconduct. The Court held that the absences must be both excessive and unexcused but held that absence due to illness and other excusable reasons are deemed excused if the employee has properly notified the employer.

In this matter the evidence establishes that Ms. Sedlock was not able to resume her full duties because of medical restrictions that had been placed upon her work by her physician due to the claimant's pregnancy. The employer had not allowed the claimant to return to work with limitations but had maintained the claimant on the company employment roles during the period of her maternity leave with the organization. The claimant was discharged on June 29, 2012 when she no longer had any leave time available. The employer at that time knew that the claimant continued to be medically unable to resume her full duties.

The question before the administrative law judge is not whether the employer has a right to discharge an employee for this reason but whether the discharge is disqualifying under the provisions of the Employment Security Law. While the decision to terminate Ms. Sedlock may have been a sound decision from a management viewpoint, intentional misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits has not been shown. Benefits are allowed provided the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated August 13, 2012, reference 04, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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