

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEETTA L MCDOLE

Claimant

APPEAL NO. 13A-UI-05172-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAREWAY STORES INC

Employer

OC: 03/31/13

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

Section 96.4-3 – Able to and Available for Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 29, 2013, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on June 6, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Theresa McLaughlin participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant worked full time for the employer as grocery clerk and shift supervisor from September 10, 2005, to February 27, 2013. She had broken her foot while off work and was on leave under the Family and Medical Leave Act (FMLA) and short-term disability.

The employer discharged the claimant effective April 1 because as of that date she had not been released to return to work without restrictions. She still had to wear a boot to support her foot and the employer would not let her work with the boot.

The claimant had a doctor's appointment scheduled on April 4, 2013, and was released to work without restrictions. She returned to the store on April 5, 2013, and informed her supervisor that she was now released to return to work, but the supervisor said that rules were rules and the termination stood.

As of the time the claimant applied for unemployment insurance benefits, she was fully able to work without restrictions.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a.

The employer discharged the claimant because she had exhausted leave and was not able to return to work without restrictions. No willful and substantial misconduct has been proven in this case.

This is like *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989), where the Iowa Supreme Court considered the case of a pregnant certified nursing assistant (CNA) who went to her employer with a physician's release that limited her to lifting no more than 25 pounds. Wills filed a claim for benefits because the employer would not let her return to work because of its policy of never providing light-duty work. The court ruled that Wills became unemployed involuntarily and was able to work because the weight restriction did not preclude her from performing other jobs available in the labor market. Id. at 138.

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3. As of the time the claimant filed for unemployment insurance benefits, she was fully able to work without any restrictions.

Even if this case was treated as a quit based on the claimant not returning to work after exhausting her leave of absence, she would be eligible under Iowa Code Section 96.5-1-d. That law provides that individual is qualified to receive benefits if she: (1) left employment because of illness, injury or pregnancy with the advice of a licensed and practicing physician, (2) notified the employer that she needed to be absent because of the illness or injury, and (3) offered to return to work for the employer when recovery was certified by a licensed and practicing physician, but her regular work or comparable suitable work was not available. Iowa Code Section 96.5-1-d.

DECISION:

The unemployment insurance decision dated April 29, 2013, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs