

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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NORTH IOWA GIRLS SCOUT COUNCIL
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Appeal Number: 04A-UI-06512-SWT
OC: 05/02/04 R: 02
Claimant: Respondent (5)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

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 June 7, 2004, reference 01, that concluded the claimant voluntarily quit employment with good cause attributable to the employer. A telephone hearing was held on July 8, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Rose Hussey participated in the hearing on behalf of the employer. Exhibits 1a through 1k and 2a through 2d were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as a registrar from September 2000 to February 10, 2004. Rosie Hussey was the claimant's supervisor.

On February 11, 2004, the claimant was on an approved medical leave of absence due to acute depression and anxiety that was diagnosed as having been due to her work environment. The claimant provided the employer with a medical statement that excused her from working.

On March 30, 2004, the claimant received a letter from Hussey explaining that on March 31, 2004, she would have exhausted all forms of paid leave, but that as of April 1, 2004, she would be entitled to one more sick day and 1.25 days of vacation. She was further informed that she could also request leave without pay for an additional 30 days. Hussey stated in the letter that if the claimant were unable to work when the leave without pay ended on May 5, 2004, her employment would be terminated.

The claimant supplied the necessary information and medical documentation to be placed on leave without pay until May 5, 2004. On April 21, 2004, the claimant was examined by her treating physician who advised the claimant that she was medically released to seek employment effective April 26, 2004, but she continued to be unable to return to work for the employer. The claimant provided this medical release to Hussey.

On May 5, 2004, the claimant wrote a letter to Hussey that stated that by the terms of Hussey's letter dated March 30, 2004, she understood that her employment was terminated since she was still determined medically unable to return to work for the employer. On May 7, 2004, Hussey mailed a letter to the claimant stating that she was extending the claimant's leave for another 30 days. The claimant did not receive the letter until May 10, 2004, and did not follow up on the letter because she did not think the extension was made in good faith since she had already been terminated and there was no provision for more than one leave without pay under the employer's policies.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code Sections 96.5-1 and 96.5-2-a. The letter dated March 30, 2004, announced that the claimant would be terminated on May 5, 2004, if she were not able to return to work as of that date. The employer did nothing to rescind this notice of termination on or before May 5, 2004, and therefore, legally the termination became effective on May 5, 2004, when her doctor advised that she could not return to work for the employer at that time. The letter the employer sent two days later extending the leave without pay did not rescind a discharge that had already taken place.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established in this case. The claimant was discharged due to inability to return to work for the employer certified by a doctor. This does not amount to misconduct.

The next issue is whether the claimant was able to and available for work as required by Iowa Code Section 96-4-3. The unemployment insurance rules provide that a person must be physically able to work, not necessarily in the individual's customary occupation, but in some reasonably suitable, comparable, gainful, full-time endeavor that is generally available in the labor market. 871 IAC 24.22(1)b. The evidence establishes that the claimant was able to perform gainful work, just not for the employer. There is unquestionably work available in the labor market for the claimant, and she has shown she is available for work.

DECISION:

The unemployment insurance decision dated June 7, 2004, reference 01, is modified with no effect on the outcome of the case. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/kjf