

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBRA K RAMSEY
Claimant

APPEAL NO. 14A-UI-13149-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES MOINES – CHRIST THE KING
Employer

OC: 11/30/14
Claimant: Appellant (2)

Section 96.5(2)a – Discharge
Section 96.4(3) – Able and Available for Work

STATEMENT OF THE CASE:

Debra Ramsey filed a timely appeal from a representative's decision dated December 16, 2014 (reference 01) which denied unemployment insurance benefits, finding that the claimant voluntarily quit work on November 25, 2014 because of a non-work-related illness or injury. After due notice was provided, a telephone hearing was held on January 29, 2015. Claimant participated. Participating on behalf of the claimant was Mr. Kyle T. Reilly, Attorney at Law. The employer participated by Mr. Paul Jahnke, Representative, and witnesses Mr. Chris Aldinger, Business Manager, and Ms. Eileen Miller, Lunch Room Supervisor.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits and whether the claimant is able and available for work.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Debra Ramsey began employment with Christ the King School of Des Moines, Iowa on April 7, 2009. Ms. Ramsey was employed as a part-time lunch room clerk and was paid by the hour. The claimant normally worked 5 1/2 per day. Her immediate supervisor was Eileen Miller.

Prior to the last day of the spring 2014 school term, Ms. Ramsey informed her supervisor that she would be undergoing foot surgery in June during the summer break. The claimant's last day of work was June 3, 2014 when the spring term ended. However, the claimant had been given reasonable assurance that she would continue in her normal job position with the school when its next academic term or year began. Ms. Ramsey confirmed that she intended to return when school resumed.

In August 2014 Ms. Ramsey contacted Ms. Miller, her supervisor, and informed the employer through Ms. Miller that she would not be able to return to work when school began because she had not been released by her physician. Ms. Miller acknowledged the information. Ms. Ramsey continued to maintain contact with her supervisor by telephone, informing the employer that she was still unable to return to work because she had not been released to do so following her foot

surgery. On October 21, 2014 Ms. Ramsey had a medical appointment and at that time provided a patient status report by her medical provider, Iowa Ortho, stating that the claimant would be unable to return to work until December 1, 2014 and stating that the claimant's next medical appointment to be six weeks thereafter.

Ms. Ramsey personally contacted her supervisor on October 21, 2014 and informed Ms. Miller that the claimant had been determined to be unable to return to work for medical reasons until December 1, 2014. As she had done in the past, Ms. Miller accepted the information without requesting any further medical documentation to be provided to the employer by Ms. Ramsey. Ms. Miller expected the claimant to return to work on December 1, 2014.

Following the claimant's communication with her supervisor on October 21, 2014, on an unspecified date the employer received information that Ms. Ramsey was going to or had taken a trip on a cruise ship. It appears that the employer concluded that the claimant had elected to take a personal vacation, instead of returning to work. A management decision was made to terminate Ms. Ramsey from her employment by a letter sent to the claimant dated November 25, 2014.

When Ms. Ramsey received the discharge letter, she immediately contacted the employer in an attempt to save her job and submitted the medical documentation verifying that she had been determined to be unable to return to work until December 1, 2014. The employer considered the matter but chose not to rescind the decision to terminate Ms. Ramsey from her employment.

The medical patient status report had initially limited the claimant to working three hours per day upon her return to duty on December 1, 2014. The claimant attended her six week appointment on December 2, 2014 and was determined to be fully able to return to work without limitations at that time.

REASONING AND CONCLUSIONS OF LAW:

The first question before the administrative law judge is whether the evidence in the record establishes whether the claimant voluntary quit employment or was discharged by the employer. The evidence establishes that the claimant did not quit her employment but that she was discharged by letter dated November 25, 2014.

The next question before the administrative law judge is whether the evidence in the record establishes misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. It does 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 job disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants the denial unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all, if it is not contrary to public policy; but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation.

In the case at hand, the claimant had informed her immediate supervisor prior to the end of the spring 2014 school term that she needed to undergo foot surgery during the summer break. Prior to the claimant's expected return to work to begin the fall term, Ms. Ramsey informed her supervisor that she had not been released to return to work and her return would be delayed. Ms. Miller took that information, acknowledged that the claimant's continued absence was okay, and did not request any further documentation from Ms. Ramsey about the issue. Ms. Ramsey maintained regular contact with her immediate supervisor, letting the employer know through her supervisor that her return to work continued to be delayed for medical reasons. The claimant's immediate supervisor continued to authorize the claimant to be away from work for medical reasons and requested no further documentation.

On October 21, 2014 Ms. Ramsey had attended a medical appointment and at that time had been given a patient status report specifically stating that the claimant was “unable to work” and stating that the claimant’s anticipated date of returning to work as December 1, 2014. Ms. Ramsey followed a reasonable course of action by immediately calling her supervisor and specifically informing Ms. Miller of her medical status and the anticipated date that she would be allowed to return to work. Ms. Miller once again accepted the information and requested no further documentation from the claimant. At that point Ms. Ramsey expected to return to work on December 1, 2014 when released to do so by her physician and the employer, through the claimant’s immediate supervisor, had been provided notice of the claimant’s inability to return to work prior to that date and the reason for it. The employer agreed, in effect, to continue to hold the claimant’s job for her until Ms. Ramsey was medically released to return to work.

Prior to the effective date that Ms. Ramsey was authorized to return to work by her physician, the employer learned that Ms. Ramsey had left the geographic area to take a cruise ship trip and concluded that the claimant had chosen to go on a “vacation” instead of reporting back to work as soon as possible. A management decision was made to terminate Ms. Ramsey from her employment and the claimant was informed of her discharge by letter dated November 25, 2014. In an effort to save her job, the claimant contacted her employer and offered to provide the medical documentation that the employer had not previously requested; which would verify that the claimant had been determined medically unable to return to work until December 1, 2014.

The question before the administrative law judge in this case is not whether the employer made a sound business decision in separating Ms. Ramsey from her employment, but whether the evidence in the record establishes potential misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. While the decision to terminate Ms. Ramsey may have been a sound decision from a management viewpoint, the evidence in the record establishes that the claimant was discharged for no disqualifying reason. The medical determination, that the claimant was unable to return to work until December 1, 2014, is evidence that the claimant was unable to return for medical reasons until December 1, 2014. The employer was aware of the claimant’s absence from work due to illness or injury. The employer elected to discharge the claimant for her absences prior to the date that she had been medically certified as being able to return to work. The evidence in the record also establishes that the claimant’s election to take a family trip while she was unable to return to work did not violate the medical limitations that had been placed upon the claimant and took place during a period of time when she had been medically determined as not able to return to work because her work required her to be on her feet. The claimant testified that she had been wheelchair bound during the trip and, therefore, did not violate any medical limitations. The claimant would not have been able to perform for Christ the King School by using a wheelchair. The evidence in the record establishes that Ms. Ramsey had sufficiently recovered and is considered to be able and available for work for the general labor market as of November 30, 2014; the day that she opened her claim for unemployment insurance benefits.

DECISION:

The representative's decision dated December 16, 2014 (reference 01) is reversed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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