

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEATHER S HARRIS
Claimant

APPEAL NO. 09A-UI-03411-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

**Original Claim: 01/25/09
Claimant: Appellant (4)**

Section 96.4-3 – Eligibility for Benefits
Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Heather S. Harris filed a timely appeal from an unemployment insurance decision dated February 19, 2009, reference 01, that disqualified her for benefits. After due notice was issued, a telephone hearing was held March 24, 2009, with Ms. Harris participating. Human Resources Assistant Melinda Karl participated for the employer, Casey's Marketing Company.

ISSUE:

Is the claimant medically able to work?

Was the claimant discharged for disqualifying misconduct?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Heather S. Harris was employed by Casey's Marketing Company from January 29, 2008, until she was discharged effective January 22, 2009. She last worked as an assistant manager. Ms. Harris underwent major ankle surgery on December 8, 2009. As of the date of the hearing in this matter, she had not been released to return to work.

The company provided Ms. Harris with FMLA paperwork to be filled out by her physician. The original due date for the paperwork was December 15, 2008. The second due date was January 5, 2009. The paperwork was not turned in. The employer did not discharge Ms. Harris until January 22, 2009, the date on which her FMLA leave expired.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the separation was a disqualifying event. It was 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.

The employer has the burden of proof. See Iowa Code section 96.6-2. Among the elements it must prove is that the final incident leading directly to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). Ms. Harris' failure to return the FMLA paperwork by January 5, 2009, was not a current incident as of the time of the date of the discharge. Assuming without finding that it was Ms. Harris' fault that the paperwork was not turned in on time, no disqualification may be imposed because of the delay between the due date and the date of separation.

The remaining question is whether Ms. Harris meets the eligibility requirement of being medically able to work. She does not.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements

of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The claimant testified without contradiction that she underwent major surgery on December 8, 2008, and as of the date of the hearing, March 24, 2009, she had not been released by her physician to return to work. Benefits must be withheld until the claimant meets all eligibility requirement of Iowa Code section 96.4-3.

DECISION:

The unemployment insurance decision dated February 19, 2009, reference 01, is modified. The claimant was discharged under circumstances not constituting disqualifying misconduct. She is ineligible to receive unemployment insurance benefits, however, until she establishes that she meets the eligibility requirement of being medically able to work. When released by her physician, the claimant should provide medical documentation to the Agency.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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