IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

EMILY J CALEF
Claimant

JIM MILLER NISSAN INC
Employer

APPEAL NO. 10A-UI-12610-L

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/25/10
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 31, 2010 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held on October 20, 2010 in Cedar Rapids, Iowa. Claimant participated. Employer participated through owner David Wright and sales manager Tony Vandersee. The administrative law judge took judicial notice of the administrative record. Employer's Exhibit 1 was admitted to the record.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer or if she was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time business manager from September 1, 2009 through July 19, 2010 when she was fired for not having returned to work that day when the employer believed her maternity leave expired. Claimant did not receive the May 21, 2010 letter the employer sent detailing the leave period. (Employer's Exhibit 1) Her last day of work was May 19, 2010 when she went on maternity leave because of pregnancy complications. She told the employer she wanted eight weeks with her baby at home before returning to work. The baby was born June 10, 2010. She was released to return to work on July 27, 2010. She notified the employer of the expected release date and left phone messages on July 15 and 19, 2010 and by e-mail on July 23, 2010 asking for a leave extension until August 1, 2010 because of postpartum issues. She received the termination e-mail on July 27, which stated her leave request had been granted for eight weeks, which ended on July 18, 2010. Claimant had not yet been medically released to return to work until July 27, 2010. She e-mailed back on July 29 and reminded him she had called and e-mailed asking for an extension of her leave. The termination stood.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not quit but was discharged for no disqualifying reason.

Iowa Code § 96.5-1-d provides:

> An individual shall be disqualified for benefits:
>
> 1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:
>
> d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

871 IAC 24.25(35) provides:

> Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:
>
> (35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:
>
> (a) Obtain the advice of a licensed and practicing physician;
>
> (b) Obtain certification of release for work from a licensed and practicing physician;
>
> (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
>
> (d) Fully recover so that the claimant could perform all of the duties of the job.

The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that:

> "Insofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Employment Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

The statute provides an exception where:

> The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and … the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible. Iowa Code § 96.5(1)(d).

> Section 96.5(1)(d) specifically requires that the employee has recovered from the illness or injury, and this recovery has been certified by a physician. The exception in section 96.5(1)(d) only applies when an employee is fully recovered and the employer has not held open the employee's position. *White*, 487 N.W.2d at 346; *Hedges v. Iowa Dep't of Job Serv.*, 368 N.W.2d 862, 867 (Iowa Ct. App. 1985); see also *Geiken v. Lutheran Home for the Aged Ass'n*, 468 N.W.2d 223, 226 (Iowa 1991) (noting the full recovery standard of section 96.5(1)(d)).

> In the present case, the evidence clearly shows Gilmore was not fully recovered from his injury until March 6, 2003. Gilmore is unable to show that he comes within the exception of section 96.5(1)(d). Therefore, because his injury was not connected to his employment, he is considered to have voluntarily quit without good cause attributable to the employer, and is not entitled to unemployment … benefits. See *White*, 487 N.W.2d at 345; *Shontz*, 248 N.W.2d at 91.

Although the employer argued that claimant was a three-day no call-no show beginning July 18 and her termination date was July 22, 2010, employer's own document in the fact-finding record sets the separation date as July 18, thus she did not miss three days of work after the expected return date since the employer discharged her before that. The claimant was not required to return to the employer to offer services after the medical recovery on July 27, 2010 because she had already been involuntarily terminated from the employment while under medical care on July 18, 2010. Thus, the separation was a discharge.

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.

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.

Iowa Code § 96.5-1-d provides:

> An individual shall be disqualified for benefits:
>
> 1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:
>
> d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Although employer is not obligated to provide light duty work for an employee whose illness or injury is not work related, the involuntary termination from employment while under medical care was a discharge from employment. Even had the claimant's short term leave expired, the employer did not place the claimant on notice that she would lose her job by a date certain if she were not released to return to work or specify a short-term date by which she could return. Claimant made reasonable efforts to report her anticipated release date of July 27 and her request for an additional week of leave and had told the employer before she left on maternity leave she wanted to be home for eight weeks after the baby was born. Since the baby was born June 10, employer had reasonable knowledge that claimant was not intending to return to work until August 5, 2010. Since claimant was still under medical care and had not yet been released to return to work as of the date of separation, no disqualifying reason for the separation has been established. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The August 31, 2010 (reference 01) decision is affirmed. The claimant did not quit but was discharged for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs