

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CANZADIE A MAKEDONSKI**  
Claimant

**APPEAL NO. 07A-UI-06353-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FERGUSON ENTERPRISES INC**  
Employer

**OC: 05/13/07 R: 03  
Claimant: Appellant (2)**

Iowa Code Section 96.4(3) – Able & Available  
Iowa Code Section 96.5(2)(a) – Discharge

**STATEMENT OF THE CASE:**

Canzadie Makedonski filed a timely appeal from the June 14, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 16, 2007. Ms. Makedonski participated. Debra Dange, Human Resources Administrator, represented the employer and presented additional testimony through Troy Beatty, Third-shift Manager. Exhibits One through Six were received into evidence.

**ISSUES:**

Whether the claimant's separation from the employment was a quit, discharge, layoff or other separation. The administrative law judge concludes the claimant was discharged by the employer.

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the claimant has been able to work and available for work since she established her claim for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Canzadie Makedonski worked for Ferguson Enterprises as a full-time third-shift "Merger" from October 15, 2005 until she suffered a workplace injury in the early morning hours of December 6, 2006. The hours of the third shift were 11:00 p.m. to 7:30 a.m. The employer is a wholesale distributor of plumbing supplies. During the third-shift on December 5, Ms. Makedonski and coworker Bobbie Walker were working together to lift heavy boxes onto a pallet. They had cleared an appropriate area in their workspace to allow them to safely maneuver the heavy boxes. There were many other employees working in the same general area. At approximately 2:30 a.m. on December 6, Ms. Makedonski fell backward over a box another employee had placed on the floor behind Ms. Makedonski without alerting Ms. Makedonski. Ms. Makedonski was carrying a heavy box at the time she fell. Ms. Makedonski was not aware of the extent of her injuries at

the time, but had suffered injury to her left knee, her left lower leg and her right hip. Ms. Makedonski continued to perform her work until the end of her shift. Third-Shift Manager Troy Beatty prepared a first report of injury and obtained a statement from Ms. Makedonski's lifting partner, Bobbie Walker. Ms. Walker indicated in her statement that Ms. Makedonski had fallen backwards over boxes stacked on the floor and had hurt her leg.

After the December 5-6 shift, Ms. Makedonski began to experience tightness in her back. Ms. Makedonski discovered that she had significant bruising on her hip and knee. Ms. Makedonski was in pain and took Tylenol and Ibuprofen for her pain. Ms. Makedonski intended to return to her duties and report at 11:00 p.m. on December 6 for her next shift. Mr. Beatty issued a written reprimand to Ms. Makedonski for failing to be aware of a trip hazard in her surroundings. Ms. Makedonski requested medical evaluation and/or treatment of her injury. Shipping Dock Lead, Eric Geiser told Ms. Makedonski she would need to speak with Human Resources Administrator Deb Damage the next morning.

On December 7, Ms. Makedonski met with Ms. Damage to discuss her workplace injury. Ms. Damage scheduled an appointment with the employer's doctor, Dr. Kim.

On December 7, Dr. Kim inspected Ms. Makedonski's leg and reviewed x-rays, which indicated no broken bones. Dr. Kim then left the exam room without further explanation. Ms. Makedonski asked the nurse what was happening. The nurse tried to summon Dr. Kim, who had left the building. The nurse attempted to contact Dr. Kim, but was unsuccessful. Ms. Makedonski advised the nurse that she was unhappy with the evaluation and/or treatment she received from Dr. Kim and would be contacting the employer to make arrangements to be evaluated by another doctor. Dr. Kim had released Ms. Makedonski to return to her regular duties without restrictions.

On December 7, Ms. Makedonski again contacted Ms. Damage and indicated her displeasure with the appointment with Dr. Kim and her desire to see another doctor. Ms. Damage told Ms. Makedonski that if she elected to see another doctor, the employer would not cover the expense. After the visit to Dr. Kim, the employer refused to acknowledge Ms. Makedonski's workplace injury as a workers' compensation matter.

On December 7, Ms. Makedonski consulted with Dr. Kenneth Harris, a doctor with whom she had no prior relationship. Ms. Makedonski wanted an independent assessment of her condition and thought it best not to consult her regular doctor. Dr. Harris examined Ms. Makedonski and prescribed pain medication. Dr. Harris ordered x-rays to be obtained the following week. Ms. Makedonski noted that her hip felt like it was "grinding and popping."

Ms. Makedonski reported at 11:00 p.m. for her December 7 shift with medical documentation of her injury and medical restrictions. Ms. Makedonski provided that documentation to Third-shift Manager Troy Beatty. The medical release form indicated that Ms. Makedonski could return to light duty work. The medical release restricted Ms. Makedonski from lifting more than 15 pounds, restricted her from bending, crawling, and squatting, and restricted her from spending "excessive amount of time" on her feet. The medical release indicated that these restrictions would continue for two weeks. Mr. Beatty told Ms. Makedonski that for the time being he would assign Ms. Makedonski to perform less physically taxing work at the "audit station." Ms. Makedonski had previously been assigned to light duty work at the audit station during a pregnancy. Ms. Makedonski was able to perform the "audit station" work despite her injury and the work complied with her medical restrictions. Mr. Beatty spoke to Human Resources Administrator Debra Damage. Mr. Beatty then told Ms. Makedonski that the employer was not going to provide work to accommodate her medical restrictions and that she needed to

go home. Ms. Makedonski's regular duties involved lifting boxes that weighed up to 100 pounds with a lifting partner, constant standing, bending and twisting.

On December 8, Ms. Makedonski reported at 11:00 p.m. for scheduled shift and clocked in for work. Mr. Beatty asked her whether she had been released to return to her regular duties and Ms. Makedonski reported she had not received a full release. Mr. Beatty told Ms. Makedonski that she could not work and sent her home.

On December 9, Ms. Makedonski reported at 11:00 p.m. for her scheduled shift and clocked in for work. A supervisor, John, intercepted Ms. Makedonski and told her attempt to report for work was going to result in the same outcome as the preceding evenings. Mr. Beatty then told Ms. Makedonski that she was not to show up for work any more. Mr. Beatty told Ms. Makedonski that the employer had been considering placing Ms. Makedonski on a medical leave under the Family and Medical Leave Act (FMLA). Ms. Makedonski responded that her workplace injury was not an FMLA matter and that she would not consider an FMLA leave. Thereafter, Ms. Makedonski complied with Mr. Beatty's directive not to show up for her scheduled shift. There after Ms. Makedonski was on contact with Debra Damge, Human Resources Administrator.

On December 11, Ms. Damge told Ms. Makedonski that the employer was placing Ms. Makedonski on an FMLA leave. Ms. Makedonski indicated that she did not want a medical leave and would not sign a request for leave. Ms. Damge told Ms. Makedonski that the employer was moving forward with an FMLA leave nonetheless. On December 11, Ms. Damge did in fact complete a request for FMLA leave on Ms. Makedonski's behalf. Ms. Damge indicated that Ms. Makedonski had a serious health condition that made her unable to perform the essential duties of her job. Ms. Damge indicated that the leave was effective December 7, 2006 and that the anticipated leave end date was December 21, 2006. Ms. Damge indicated on the leave request form that Ms. Makedonski had refused to sign the form. Ms. Damge gave Ms. Makedonski no specific instructions to maintain contact with the employer, but instructed Ms. Makedonski to contact Ms. Damge when she had further information.

On December 21, Ms. Makedonski provided the employer with a medical release that continued her prior restrictions for two weeks. At this point, Ms. Makedonski had completed a physical therapy program. At this point, Ms. Makedonski had obtained legal counsel regarding the workers' compensation claim. Ms. Makedonski's attorney advised her to limit or avoid direct contact with the employer.

On January 5, Ms. Makedonski provided the employer with a medical release that continued the same restrictions until Ms. Makedonski could be seen by an orthopedist.

On January 19, 2007, Ms. Makedonski received a certified letter from Ms. Damge. The letter was dated January 10, 2007. The letter indicated that Ms. Makedonski was required to submit "Certification of Physician or Practitioner" to support her need to continue on an FMLA leave. The letter indicated that the deadline for submitting the requested information was January 19, *the same day* Ms. Makedonski received the letter. Ms. Makedonski did not respond to the letter.

On February 23, Ms. Makedonski received a certified letter from Ms. Damge. The letter was dated February 20. The letter advised that the FMLA leave would expire on March 1 and that since Ms. Makedonski was unable to return to work, the employer would be terminating the employment unless Ms. Makedonski provided proof she had been granted a full release to return to her regular duties.

Ms. Makedonski established a claim for unemployment insurance benefits that was effective May 13, 2007. At the time Ms. Makedonski established her claim for benefits, she had recently undergone a five-week physical therapy program without improvement. Ms. Makedonski had consulted with an orthopedist, who recommended pain management treatment. Ms. Makedonski continues under the same medical restrictions put in place on December 7.

On June 12, 2007, an Agency representative entered a reference 02 decision approving Ms. Makedonski for department approved training effective May 27, 2007 through December 23, 2007. Ms. Makedonski has an Associates Degree in Psychology. Prior to being approved for department approved training, Ms. Makedonski sought data entry work that complied with her medical restrictions.

Ms. Makedonski's workers' compensation claim is still pending.

### **REASONING AND CONCLUSIONS OF LAW:**

Workforce Development rule 871 IAC 24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25. The evidence in the record indicates that Ms. Makedonski did not voluntarily quit the employment. The evidence indicates that Ms. Makedonski did not desire or request a medical leave of absence from the employment.

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".

871 IAC 24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

The evidence in the record establishes that Ms. Makedonski suffered a workplace injury on December 6, 2006. The evidence indicates that on the date of the injury, Ms. Makedonski continued to perform her regular duties after she suffered the injury. The evidence indicates that Ms. Makedonski reported for work on December 6 and performed her regular duties. The evidence indicates that on December 7, Ms. Makedonski reported for work with medical restrictions directly related to the workplace injury she suffered on December 6. Ms. Makedonski's medical restrictions documented a disability. An employer is under a legal duty to reasonably accommodate disabled workers. See Sierra v. Employment Appeal Board, 508 N.W.2d 719, 723 (Iowa 1993), citing Foods, Inc. v. Civil Rights Commission, 318 N.W.2d 162 (Iowa 1982). The evidence indicates that Ms. Makedonski was able to work, provided her medical restrictions were accommodated. The evidence indicates that the employer was able to reasonably accommodate Ms. Makedonski's medical restrictions, without experiencing unreasonable hardship, by putting Ms. Makedonski to work at the "audit station." The evidence indicates that the employer was unwilling to accommodate Ms. Makedonski's medical restrictions and placed Ms. Makedonski on a forced medical leave effective December 7, 2006. The evidence indicates that Ms. Makedonski continued to be able to perform work for the employer, provided her medical restrictions were reasonably accommodated. The evidence indicates that the employer initially severed the employment relationship on December 7 by refusing to allow Ms. Makedonski to return to work with medical restrictions. The evidence indicates that the employer permanently severed the employment relationship effective March 2 because Ms. Makedonski was unable to provide a full medical release that would allow her to return to her regular duties. Finally, the evidence indicates that Ms. Makedonski has been able to perform some gainful employment since establishing her claim for unemployment insurance benefits.

The employer's act of placing Ms. Makedonski on a forced medical leave was tantamount to discharging Ms. Makedonski from the employment. See Wills v. Employment Appeal Board, 447 N.W.2d 137 (Iowa 1989).

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 evidence fails to establish any misconduct on the part of Ms. Makedonski in connection with the employment. Accordingly, Ms. Makedonski was discharged for no disqualifying reason and is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged. Ms. Makedonski would also be eligible for benefits had the administrative law judge concluded that the separation from employment fell within the category heading of "other separations." 871 IAC 24.1(113)(d).

The employer's conduct concerning the claimant's separation from the employment appears to have been motivated by an unconscionable desire and attempt to minimize the employer's liability in connection with a legitimate workers' compensation claim.

**DECISION:**

The Agency representative's June 14, 2007, reference 01, decision is reversed. The claimant was discharged from the employment for no disqualifying reason. The claimant has been able

and available for work since establishing her claim for unemployment insurance benefits. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs