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

Appeal Number: 05A-UI-04391-CT
OC: 03/20/05 R: 02
Claimant: Appellant (1)

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.

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_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct
Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Brandi VanPelt filed an appeal from a representative's decision dated April 15, 2005, reference 01, which denied benefits based on her separation from Des Moines University (DMU). After due notice was issued, a hearing was held by telephone on June 2, 2005. The hearing was recessed and additional testimony was taken on July 15, 2005 and September 29, 2005. Ms. VanPelt participated personally and was represented by Jeffrey Lipman, Attorney at Law. Exhibits A and B were admitted on Ms. VanPelt's behalf. The employer participated by Becky Lade, Director of Human Resources, and Diane Langner, Human Resources Administrator. The employer was represented by John Parmeter, Attorney at Law. Exhibits 1 through 21 were admitted on the employer's behalf. Participating in the hearing pursuant to

subpoenas issued on Ms. VanPelt's behalf were Marilyn Carrig-Smith, Janet Carter, Dawn Stephenson, James Waters, and Alison Noftsger.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. VanPelt began working for DMU on August 24, 1998 and last performed services on November 29, 2004. She was employed full time as a clerkship coordinator. Ms. VanPelt called the employer on November 30, 2004 to report that she would be absent and would be filing a worker's compensation claim. Arrangements were made for her to be seen by Dr. Colin Kavanagh on December 2 relative to her claim of a work-related condition. Dr. Kavanagh excused Ms. VanPelt from work until she could have a psychological evaluation, which was done on December 10 and December 13. The psychologist, Dr. Sam Graham, was of the opinion that Ms. VanPelt should not return to work until there was some resolution of her work-related concerns.

On December 10, 2004, Ms. VanPelt filed a request for time off under the Family and Medical Leave Act (FMLA). Dr. Scott Fackrell signed the paperwork and indicated Ms. VanPelt was suffering from stress. On February 7, 2005, Ms. VanPelt was placed on FMLA retroactive to November 30, 2004. In a letter dated January 26, the employer requested that Ms. VanPelt provided updated medical information by February 11, 2005. On February 1, Ms. VanPelt responded that she had not been released but would notify the employer when her doctor gave her a date on which to return to work. The employer sent Ms. VanPelt a letter on February 7 advising that her FMLA was to expire on February 21 and that she would either have to return to work on that date or make a written request for an extended leave of absence. The letter advised that, if she was unable to return to work on February 21 because of medical problems, she would need to submit current medical information to support the request for an extended leave of absence. Ms. VanPelt was advised that the failure to provide the requested documentation could result in her termination. Ms. VanPelt made a written request for an extended leave on February 18. She did not submit any medical evidence with the request. She pointed out to the employer that the medical documentation was already on record as part of her FMLA certification. The employer's letter of February 22 to Ms. VanPelt reiterated the need for current medical evidence to support the request for an extension to the leave of absence. The letter advised that the request for an extension was denied because of the failure to provide additional medical information. On March 11, 2005, Ms. VanPelt was mailed a letter advising that DMU considered her to have voluntarily quit because she had not returned to work following the expiration of her FMLA.

According to the information supplied by Dr. Fackrell on January 3, 2005, he had last treated Ms. VanPelt on December 7, 2004. She failed to appear for a December 21 follow-up visit with Dr. Fackrell. Dr. Fackrell believed she needed counseling and referred her to Dr. Easton, a psychologist. Ms. VanPelt saw Dr. Easton on one occasion in late January of 2005. She had made application for short-term disability benefits through her employment. On February 15, 2005, the insurance carrier requested information regarding all medical treatment from November 29, 2004 to the present. On March 21, 2005, Ms. VanPelt was notified that her claim for short-term disability was being closed due to her failure to provide the requested medical information.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. VanPelt was separated from employment for any disqualifying reason. She became separated from the employment because of her failure to provide medical documentation of the need to be off work. A good deal of hearing time was spent establishing the cause of Ms. VanPelt's medical condition that necessitated the time off. The administrative law judge is well aware that she considered her condition to be work-related based on actions and alleged actions on the part of her supervisor. The issue is not what caused the problems she was experiencing. The issue is whether her failure to submit documentation of a continuing medical need to remain off work beyond February 21 constituted disqualifying misconduct within the meaning of the Iowa Employment Security Law.

Ms. VanPelt had exhausted her 12 weeks of FMLA by February 21. Therefore, any rights provided under the FMLA regulations were no longer available to her. The FMLA was granted based on a certification completed by Dr. Fackrell, who had last treated Ms. VanPelt on December 7, 2004. The employer also had the report from Dr. Graham, who conducted the psychological examination of Ms. VanPelt on December 13, 2004. It was not unreasonable for the employer to require medical documentation that Ms. VanPelt still had a condition in February of 2005 that prevented her from returning to work. It was also not unreasonable for the employer to require medical documentation as to when it was anticipated that she would be able to return to work. The employer notified Ms. VanPelt in a letter dated January 26, 2005 that she would need to provide updated medical evidence to support a request to extend her leave beyond 12 weeks. She was notified on February 7, 2005 that the employer needed current medical evidence to support her request for leave. Although Ms. VanPelt had seen Dr. Easton in January of 2005, she did not submit any documentation from him regarding her ability to return to work. As of February, the employer had no documentation concerning Ms. VanPelt's health status during the approximately two months that had elapsed since her last known medical treatment. Rather than making a return visit to her doctor to obtain certification of the continued need to remain off work, Ms. VanPelt provided the employer with no current, updated medical information verifying her need to remain off work. She likewise failed to provide updated medical information in support of her claim for short-term disability benefits.

Without periodic updates on an individual's health status, an employer has no way of knowing whether an individual should be working or not. If a doctor tells an individual to remain off work indefinitely, the individual has no impetus to return to the doctor to be released to work until such time as the individual chooses to do so. This is not a case in which Ms. VanPelt was receiving regular and periodic care from a doctor who was telling her to remain off work. It appears that she was without medical treatment of any kind after she saw Dr. Easton in January of 2005. The request for FMLA form Ms. VanPelt completed gave notice that she would be required to have a health care provider certify that she was unable to return to work on the date her leave expired.

The employer herein provided Ms. VanPelt with the full 12 weeks of FMLA she was entitled to under the law. The employer stood willing to consider an extension of the leave if there had been medical certification of the need to continue the leave. It is true that Ms. VanPelt had not been released by her doctor to return to work as of the date on which the employer considered her employment severed, March 11, 2005. However, she had not been released because she had not returned to the doctor for treatment. She missed her December 21, 2004 appointment with Dr. Fackrell. One cannot be released to return to work (or, conversely, advised to remain off work) if she does not see the doctor so that her status can be determined.

Ms. VanPelt's failure to provide medical documentation of the continuing need to be away from work constituted a substantial disregard of the standards the employer had the right to expect, the cause of her medical condition notwithstanding. Ms. VanPelt had ample notice that the failure to provide updated medical information might result in her discharge. In spite of the warning, she still failed to provide evidence that she had medical grounds for remaining off work. Her substantial disregard of the employer's standards constituted disqualifying misconduct in connection with her employment. Accordingly, benefits are denied.

DECISION:

The representative's decision dated April 15, 2005, reference 01, is hereby affirmed. Ms. VanPelt was discharged by DMU for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

cfc/kjf