

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARIA N SANDOVAL**  
Claimant

**APPEAL NO. 09A-UI-14492-S2**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**G & K SERVICES COMPANY**  
Employer

**OC: 08/30/09**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Maria Sandoval (claimant) appealed a representative's September 25, 2009 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with G & K Services Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a hearing was scheduled for October 30, 2009, in Des Moines, Iowa. The claimant participated personally through Carol Matsufuji, Interpreter. The claimant's son, Angel Munez, testified for the claimant. The employer participated by Sarah Murdock, Human Resources Representative.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct and whether she is able to work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 2, 2001, as a full-time production. The claimant was injured at work on July 19, 2009. The claimant reported the injury to her supervisor on July 20, 2009. The supervisor did not report the injury to the employer. The claimant saw her physician and she was hospitalized for a week. Her physician issued her a note on July 30, 2009, restricting her from work indefinitely due to a spinal cord injury. The claimant provided the note to the employer.

On August 21, 2009, the employer sent the letter asking for her status. She was told to provide a doctor's note stating she could return to work without restrictions by August 28, 2009, or she would be terminated. The claimant's doctor refused to return her to work because she was too ill. The claimant returned to work without a release on August 28, 2009. The employer terminated the claimant for not providing an unconditional release.

The claimant has never been released to return to work since her July 19, 2009, injury.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide any evidence of job-related misconduct. The employer terminated the claimant for her work injury and inability to work after that injury. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

The administrative law judge concludes the claimant is not able to work.

871 IAC 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

- (1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness she is considered to be unavailable for work. The claimant has not been released to return to work by her physician. She is considered to be unavailable for work after July 19, 2009. The claimant is disqualified from receiving unemployment insurance benefits beginning July 19, 2009, due to her unavailability for work.

**DECISION:**

The representative's September 25, 2009 decision (reference 01) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed. The claimant is disqualified from receiving unemployment insurance benefits because she is not available for work with the employer.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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