

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONNA I NORRIS
Claimant

APPEAL NO. 06A-UI-10699-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOSAIC
Employer

**OC: 10/01/06 R: 01
Claimant: Appellant (4)**

Section 96.5(2)a – Discharge
Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, Donna Norris, filed an appeal from a decision dated October 25, 2006, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on November 20, 2006. The claimant participated on her own behalf and with a witness Sherri Billmeier. The employer, Mosaic, participated by Executive Director Jim Poehlman, Associate Director Patra Pakieser and was represented by TALX in the person of Lynn Corbeil. Exhibit One was admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits and whether she is able and available for work.

FINDINGS OF FACT:

Donna Norris was employed by Mosaic from February 19, 2001 until September 21, 2006. She was a part-time direct support associate. The claimant's last day of work was August 21, 2006. She suffered a non-work-related injury to her foot and was on FMLA from that date until September 15, 2006, when she was to return to work. She had previously used FMLA from October 9, 2005 until January 1, 2006, for another non-related-work injury.

The employer agreed to give her an additional week of unpaid leave ending September 2, 2006, so she could consult with her doctor about returning to work. After doing so Ms. Norris notified a representative of Mosaic that her doctor wanted her off her feet altogether for at least another six weeks. The employer then notified the claimant it could not hold her position open because of the staffing requirements needed to help the clients with disabilities.

The claimant was not released to return to work by her doctor until November 10, 2006, and prior to that time she was not to work at all in order to let her foot heal.

REASONING AND CONCLUSIONS OF LAW:

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant was discharged from employment but not for any current act of misconduct. She was unable to work because of a non-work-related injury and had exhausted all of her available FMLA plus some additional unpaid leave. This is not misconduct and disqualification may not be imposed.

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 filed for unemployment benefits with an effective date of October 1, 2006, and filed claims for the three weeks ending October 21, 2006. During that time she was on restrictions from her doctor not to work in order to let her foot heal.

DECISION:

The representative's decision of October 25, 2006, reference 01, is modified in favor of the appellant. Donna Norris is not disqualified from receiving benefits as she was discharged, but not for misconduct. However, she was not able and available for work until November 10, 2006. During the weeks she filed for benefits she was not eligible for unemployment benefits as she was not able to work.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs