

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY L CROUSHORE
Claimant

APPEAL NO. 11A-UI-02483-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEARS ROEBUCK & CO
Employer

**OC: 01/02/11
Claimant: Appellant (4)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated February 22, 2011, reference 01, that denied unemployment insurance benefits. After due notice was issued, a telephone hearing was held on March 28, 2011. The claimant participated personally. Participating as a witness was her husband, Bob Croushore. The employer participated by Bridget Clark, Casey Cox, and Elisha Birkenholtz. Claimant's Exhibits One and Two were received into evidence.

ISSUE:

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

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Kimberly Croushore began employment with Sears Roebuck & Company in September 2009 and worked as a full-time online sales and service representative. The claimant was paid by the hour. Her immediate supervisor was Mr. Casey Cox. On June 25, 2010, Ms. Croushore began a medical leave of absence—receiving short-term disability—for a non-work-related illness or injury. It was agreed upon that the claimant would return to work when fully released by her physician.

Because of complications related to the claimant's non-work-related illness, Ms. Croushore was not released to work by her physician and her return date was moved back on a number of occasions. Because of complications relating to her non-work-related condition, Ms. Croushore was limited by her physician to no phone work and needing to take frequent restroom breaks and snack breaks, as well as being moved to part-time hours. When the employer was finally apprised of the limitations that were going to be imposed upon Ms. Croushore's return to work, the employer determined that no job positions were available to the claimant that met the work limitations imposed by Ms. Croushore's physician. The claimant was informed on December 28, 2010, that her employment had come to an end with the company effective November 24, 2010. The employer had categorized the claimant's separation as a voluntary leave to enable Ms. Croushore to be eligible for re-hire within the company.

On March 3, 2011, Sears Roebuck & Company offered Ms. Croushore a part-time position that did not require phone work. Ms. Croushore declined the position because she shares transportation with her husband and could not accept afternoon part-time employment. At the time of hearing, the limitations imposed previously by Ms. Croushore's physician remained in place. In addition, because of transportation issues, Ms. Croushore seeks only part-time employment that complies with the previous doctor's limitations and allows the claimant to be home in the afternoon by 2:45 at the latest.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the claimant's separation from employment took place under disqualifying conditions. It did not.

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.

In this matter, the evidence in the record establishes that Ms. Croushore did not voluntarily quit her employment but that she was terminated from employment by Sears Roebuck & Company and that the claimant could not return to work and the employer had no positions available for her that would meet doctor's limitations.

Ms. Croushore was off work for an extended period of time due to a non-work-related illness or injury and was unable to perform her normal, full-time job functions as an online sales and

service representative. Due to doctor's limitations imposed because of the claimant's non-work-related illness or injury, the employer did not have a job position that the claimant was able to fulfill. The employer extended the claimant's leave of absence on a number of occasions in an effort to allow the claimant to further recuperate and to be able to fill her normal job position. After an extended period of time when the employer concluded that the claimant would not be able to return fully released without limitations, a decision was made to discharge Ms. Croushore, although the employer categorized the separation as a voluntary quit to allow the claimant to be eligible to be re-hired. The administrative law judge finds, based upon the evidence in the record, that the employer was the moving party in ending the claimant's employment with the company. Because the claimant was discharged when she was ill and unable to report to work and the employer was aware that the claimant was unable to return, her discharge took place under non-disqualifying conditions.

Having determined that the claimant's separation was non-disqualifying, the question then becomes whether the claimant was able and available for work within the meaning of the Employment Security Law. Based upon the medical limitations imposed by the claimant's physician that prohibited the claimant from working full-time, doing any phone work, and requiring the claimant to have frequent unscheduled restroom and snack breaks, as well as the limitations imposed by the claimant's lack of transportation, the administrative law judge concludes the claimant was not able and available for work as required by the Employment Security Law.

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 administrative law judge concludes, based upon the claimant's refusal of an offer of work on or about March 3, 2011, and the limitation imposed by her physician, as well as the claimant's transportation issued, Ms. Croushore has unduly limited her availability for work and is ineligible to receive unemployment insurance benefits due to her lack of being able and available for work for the time being up to and including the date of hearing.

DECISION:

The representative's decision dated February 22, 2011, reference 01, is affirmed as modified. The portion of the determination finding the claimant ineligible to receive unemployment insurance benefits is affirmed based upon the claimant's failure to be able and available for work. The portion of the determination finding the claimant voluntarily quit work under disqualifying conditions is modified to the finding that the claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are withheld until the claimant

demonstrates that she is able and available for work and actively seeking work each week that she claims unemployment insurance benefits.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw