

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEATHER MUELLER
Claimant

APPEAL NO: 17A-UI-07876-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC
Employer

OC: 07/09/17
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 25, 2017, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 22, 2017. The claimant participated in the hearing. K.D. Kalber, Director of Human Resources and Sally Eisenbacher, Payroll and Benefits Coordinator, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time C.N.A. for Good Samaritan Society from September 12, 2008 to June 25, 2017. She was discharged when she was unable to return to her position without restrictions following leave.

The claimant sustained a work-related injury March 5, 2016. She injured her elbow, neck, shoulder and hand. The workers' compensation doctor stated she reached maximum medical improvement and she was released to return to work February 27, 2017. The claimant was still experiencing chronic nerve pain in her neck and notified the employer of her condition. The employer told her she was eligible for FMLA and after completing the paperwork the claimant began FMLA March 4, 2017. She had neck surgery April 4, 2017. The claimant exhausted her FMLA May 26, 2017, and because she was not released to return to work yet but indicated she still hoped to return to work the employer offered her a 30 day general leave of absence. The claimant still had lifting restrictions of no more than 20 pounds at the conclusion of that leave on June 25, 2017, and the employer had filled the claimant's position following the end of her FMLA. Consequently, the employer notified the claimant her employment was terminated June 25, 2017, because she exhausted all available leave and was not able to return to her position as a C.N.A. at that time.

The employer is disputing that the neck injury is connected to the claimant's workers' compensation injury from March 2016 and a hearing on that matter is scheduled with the Worker's Compensation Commission in February 2018. The employer maintains her neck injury is non-work related. The claimant asserts her neck injury resulted from her March 2016 work injury.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Code section 96.5(1)d provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

871 IAC 24.26(6)b provides:

(6) Separation because of illness, injury, or pregnancy.

b. Non-employment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

Iowa Code section 24.1(113) defines separations in the following manner:

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 excepts 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.

Where an employee did not voluntarily quit but was terminated while absent under medical care, the employee is allowed benefits and is not required to return to the employer and offer services pursuant to the subsection d exception of Iowa Code section 96.5(1).

In *Prairie Ridge Addiction Treatment Servs. v. Jackson and Emp't Appeal Bd.*, 810 N.W.2d 532 (Iowa App. 2012), the claimant, who had been injured in a non-work related automobile accident had requested a leave of absence so that she could recover from her injury. The employer approved the initial request. The employer also approved an extension of the leave of absence. The employment ended when the employer decided to terminate the employment rather than grant an additional extension of the leave of absence. The claimant had not yet been released to return to work at the time the employer deemed the employment terminated. The Iowa Court of Appeals held that Ms. Jackson had not voluntarily quit the employment. The Iowa Court of Appeals further held that since Ms. Jackson had not voluntarily quit, she was not obligated to return to the employer upon her recovery to offer her services in order to be eligible for unemployment insurance benefits. The effect of the court's decision was to treat the separation as a discharge from the employment.

In *Wills v. Employment Appeal Board*, the Supreme Court of Iowa held that an employee did not voluntarily separate from employment where the employee, a C.N.A., presented a limited medical release that restricted the employee from performing significant lifting, and the employer, as a matter of policy, precluded the employee from working so long as the medical restriction continued in place. See *Wills v. Employment Appeal Board*, 447 N.W.2d 137 (Iowa 1989). In *Wills*, the Court concluded that the employer's actions were tantamount to a discharge. If a claimant sustains a work-related injury, the employer had an obligation to provide the claimant with reasonable accommodations that would allow her to continue in the work. See *Sierra v. Employment Appeal Board*, 508 N.W.2d 719 (Iowa 1993).

While the employer maintains the claimant was not discharged, the employer initiated the separation when the claimant was unable to return to work at the conclusion of her leave. Consequently, the administrative law judge finds the employer terminated the claimant's employment. The remaining question is whether the claimant's actions constitute disqualifying job misconduct as that term is defined by Iowa law.

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The parties disagree on whether the claimant's neck injury is related to her March 2016 work-related injury. The employer did not assert misconduct on the part of the claimant. In this

case, the claimant is eligible for unemployment insurance benefits regardless of whether her injury is work-related. If it is a work-related injury and the employer would not accommodate the claimant's restriction and then terminated her employment, she is eligible for unemployment benefits unless the employer can demonstrate misconduct on the part of the claimant. If it is not a work-related injury the employer is not required to provide work to the claimant within those restrictions but the claimant is eligible for unemployment because the employer cannot establish any intentional misconduct on the part of the claimant.

The Department must then determine if the claimant is able and available for work. It does not have to be the same type of work performed for this employer but the claimant has to be able to perform some type of work within her restriction. The Department previously made that inquiry and determined the claimant is able and available.

Under these circumstances, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Therefore, benefits are allowed.

DECISION:

The July 25, 2017, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/rvs