

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBIN M JONES
Claimant

APPEAL NO. 08A-UI-06412-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OMEGA CABINETS LTD
Employer

**OC: 06/08/08 R: 03
Claimant: Appellant (4)**

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

STATEMENT OF THE CASE:

Robin M. Jones (claimant) appealed a representative's July 8, 2008 decision (reference 01) that concluded she was not qualified to receive benefits, and the account of Omega Cabinets Limited (employer) would not be charged because the claimant voluntarily quit her employment for reasons that do not qualify her to receive benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 28, 2008. The claimant participated in the hearing. Sam Jones was available to testify but did not. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's representative/witness could be contacted to participate in the hearing. As a result, no one represented the employer. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit her employment for reasons that do not qualify her to receive benefits, or did the employer discharge her for work-connected misconduct?

Is the claimant able to and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on February 12, 2007. The claimant worked full-time. The claimant's last day of work was March 9, 2008. On March 10, 2008 the claimant was hospitalized and had surgery. There were complications as a result of her surgery. The claimant was hospitalized March 10 through 28 and from April 7 through 16. The employer knew the claimant was hospitalized. The claimant understood she had a medical leave of absence until April 20, 2008.

On April 20, the claimant contacted a human resource's representative and explained that she had not been released to return to work yet and did not anticipate she would be able to return to work on April 21. The claimant had a doctor's appointment on April 21 and her physician did not

release her to work. The claimant understood the doctor's office would fax this work restriction to the employer.

On May 2, 2008, the claimant received a letter from the employer indicating she had been discharged. The letter did not indicate the reasons the employer discharged the claimant. The claimant called the employer in an attempt find out why she had been discharged, but no one returned her phone calls.

The claimant established a claim for benefits during the week of June 8, 2008. The claimant believes that as of July 28, 2008, her doctor will release her to return to work. The claimant did not what, if any, work restrictions she had because at the time of the hearing she had not picked up the paperwork releasing her to work.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer has discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. The facts do not establish that the claimant quit her employment. Instead, the employer initiated the employment separation. The employer discharged the claimant on May 2, 2008.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer may have had business reasons for discharging the claimant. Since the employer did not participate in the hearing, the evidence presented during the hearing does not establish that the employer discharged the claimant for reasons constituting work-connected misconduct. As of June 8, 2008, the claimant is not disqualified from receiving benefits based on the reasons for her employment separation.

Each week a claimant filed a claim for benefits, she must be able to and available for work. Iowa Code § 96.4-3. The evidence establishes the claimant's physician had not released the claimant to receive benefits for the months of June and July. As of July 28, 2008, the claimant may be released to return to work, but she did not know what, if any, work restrictions her doctor gave her. The facts establish the claimant is not able to work as of June 8, 2008. Since the claimant anticipates being released to return to work, on July 28, she must go to her local work

office and reopen her claim and establish her ability to work by providing her local office with a copy of any work release her doctor gives her as of July 28, 2008.

DECISION:

The representative's July 8, 2008 decision (reference 01) is modified in the claimant's favor. The claimant did not voluntarily quit her employment. Instead, the employer discharged her for reasons that do not constitute work-connected misconduct. As of June 8, 2008, the claimant is not disqualified from receiving benefits based on the reasons for her employment separation. As of June 8, 2008, the claimant was not released to return to work and therefore is not eligible to receive benefits as of June 8, 2008. When the claimant receives a work release from her doctor, she must provide a copy of that work release to her local Workforce office to establish that she is able to and available for work as of the date on her work release.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css