

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**EMILY E PACKINGHAM**  
Claimant

**APPEAL NO. 11A-UI-09498-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CITY OF PALO**  
Employer

**OC: 06/12/11  
Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

City of Palo (employer) appealed a representative's July 11, 2011 decision (reference 01) that concluded Emily Packingham (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 10, 2011. The claimant was represented by Anthony Olson, Attorney at Law, and participated personally. The employer participated by Trisca Smetzer, City Administrator.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**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 December 15, 2009, as a full-time maintenance assistant. On April 5, 2011, the claimant notified her supervisor that her back was injured on April 4, 2011, and it may have been work related. The supervisor did not have the claimant complete a work injury form. The claimant provided a note to the employer indicating she could not work from April 5 through 7, 2011. The claimant resumed work from April 7 to 29, 2011. Her physician stated she could work with restrictions from April 30 to May 16, 2011, but the employer did not have work for the claimant. On May 3, 2011, the claimant talked to the City Administrator that her physician told the claimant her injury was work related. On May 18, 2011, the claimant provided the employer with a doctor's note indicating she could not work from May 17 through 23, 2011. On May 23, 2011, the doctor released the claimant to return to work with restrictions. The employer did not allow the claimant to return to work. On May 24, 2011, the City Administrator submitted the claimant's claim to the Workers' Compensation carrier.

## REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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 separated the claimant from employment even though the claimant was released to return to work with restrictions by her physician. The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

The next issue is whether the claimant was able and available for work. For the following reasons the administrative law judge concludes she is.

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 was released to return to work with restrictions by her physician. She is considered to be available for work because her physician stated she was able and available for work. The claimant is not disqualified from receiving unemployment insurance benefits.

**DECISION:**

The representative's July 11, 2011 decision (reference 01) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed. The claimant is not disqualified from receiving unemployment insurance benefits.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/pjs