IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

KRISTINE M VANLANINGHAM
Claimant

SAUER-DANFOSS (US) CO
Employer

APPEAL NO. 08A-UI-09039-CT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 08/24/08 R: 02
Claimant: Appellant (2)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Kristine VanLaningham filed an appeal from a representative's decision dated September 29, 2008, reference 01, which denied benefits based on her separation from Sauer-Danfoss Company (Sauer). After due notice was issued, a hearing was held by telephone on October 22, 2008. Ms. VanLaningham participated personally. The employer did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Ms. VanLaningham was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. VanLaningham was employed by Sauer from June 13, 2005 until August 15, 2008. She was last employed full time in shipping. She was absent from work due to illness on August 14, 2008. She had a doctor's excuse she intended to give to human resources when she returned to work on August 15. Her supervisor asked if she had a doctor's note releasing her to return to work. Because she did not, she was sent home on August 15 and told not to return until she received a release from her doctor.

Ms. VanLaningham saw her doctor again on August 16 and was advised to remain off work until August 22. She was seen in the emergency room on August 18 and again advised to remain off work until August 22. She was experiencing spasms in her lower back. Ms. VanLaningham did not call the employer on August 18 or August 19 because she did not have a release to return to work. She received a letter from the employer on August 20 advising that she was considered to have abandoned her job. She was given until August 29 to advise the employer of any extenuating circumstances.

Ms. VanLaningham went to the workplace on August 20 to explain why she had not been at work and had not called. She believed she could not return to work until such time as she had a release from her doctor to return to work. Because she had not yet been released, she had not

reported to work. She assumed the employer knew her absences were due to the fact that she did not have the necessary release. Ms. VanLaningham was not allowed to retain her employment.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that Ms. VanLaningham's separation was initiated by the employer. To find a voluntary quit, there must be evidence of an intention to sever the employment relationship accompanied by some overt act of carrying out that intent. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). Ms. VanLaningham had a good-faith belief that she could not return to work until such time as she had a release from her doctor. Therefore, her absences beginning August 18 did not indicate an intention to sever her employment relationship with Sauer. She acted with due diligence in contacting the employer immediately upon receipt of the letter indicating her employment was in jeopardy. This is not the conduct of one who desires to discontinue working for an employer. Since it was the employer that initiated the separation, it is considered a discharge.

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). It appears that Ms. VanLaningham's discharge was prompted by her absences beginning August 18. The absences were for reasonable cause as she had been advised by her doctor to remain off work until August 22. The issue then becomes whether the absences were properly reported to the employer.

Ms. VanLaningham does not dispute the fact that she did not call the employer on August 18 or August 19 or make contact before the start of her shift on August 20. She had been sent home by her supervisor on August 15 and told not to return until she had a release to return to work. She should have contacted the employer to indicate she would not be returning until at least August 22. However, she had a good-faith belief the employer would assume she did not yet have the release required for her return. Once she realized there was a problem, she did not merely call the employer, she went in to discuss the situation.

The administrative law judge believes Ms. VanLaningham's failure to contact the employer timely on August 18, 19, and 20 was due to a misunderstanding of the instructions she received from her supervisor on August 15 and not a deliberate disregard for the employer's standards. For the reasons cited herein, the administrative law judge concludes that the employer has failed to satisfy its burden of proving disqualifying misconduct. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated September 29, 2008, reference 01, is hereby reversed. Ms. VanLaningham was discharged by Sauer but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

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Carolyn F. Coleman
Administrative Law Judge

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Decision Dated and Mailed

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