IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

ANN M FREIBURGER Claimant **MERCY MEDICAL CENTER** Employer	**APPEAL 14A-UI-07354-L** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 06/22/14** **Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 11, 2014 (reference 01) unemployment insurance decision that denied benefits because of voluntarily quitting the employment. After due notice was issued, a hearing was held on February 24, 2015 in Dubuque, Iowa. Claimant participated and was represented by Francis Lange, Attorney at Law. Employer participated through human resources generalist Angela Faber and human resource director Kathy Roberts. Employer's Exhibits One through Five were received. Claimant's Exhibits A and B were received.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time emergency room unit secretary from September 4, 2001 through April 11, 2014. Claimant has been in a fragile mental condition on-and-off during a number of years stemming from multiple personal tragedies from 1984 through 1997 (Claimant's Exhibit A). More recently her divorce trial in July 2013, followed by a "breakdown" in November 2013, resulted in her being placed on Family and Medical Leave Act (FMLA) leave from November 14, 2013 through an anticipated return date of December 13, 2013 (Employer's Exhibit Two, pp. 3, 4). FMLA leave was extended from December 6 to January 6 and then again until January 29, 2014. Jennifer Mohr, D.O. released her to return to work on January 29 but restricted her to four-hour shifts because of stress from her divorce proceedings. The employer accommodated the restriction. Claimant's immediate supervisor was the director of the ER department and long-time friend, Alice Prochaska. On February 10, 2014 Prochaska met with claimant about her tardiness and failure to clock in and out. Faber was present and instructed claimant to keep the personal and professional relationship with Prochaska separate while at work. Claimant continued to have more instances of tardiness and became angry when Prochaska spoke with her about this on February 24, 2014 and walked off the job. She called her doctor on February 26 about anxiety, saw her on February 27, and resumed FMLA leave effective February 25, 2014. The FMLA leave expired on March 10, 2014. On March 5, 2014

Dr. Mohr released claimant to work five-hour days (Employer's Exhibit Four). The employer accommodated the restriction. On March 12, 2014 claimant called the employer to report she would not return until further notice. The same day Roberts mailed forms to claimant for further non-FMLA leave medical documentation; possibly disability leave. Roberts gave her no specific deadline by which to return the medical information and indicated the employer would work with her. Claimant responded that she would return them after her doctor returned from vacation March 12 through March 25, 2014. A written warning was mailed to claimant on March 13, 2014 but continued work was available even though her FMLA leave had expired (Employer's Exhibit Three). This was not determinative of the employer's decision to discharge.

Claimant contacted her doctor's office in March and took the first-available appointment on April 16, 2014. She notified Roberts by email on March 28 she would not be able to see her doctor until mid-April (Claimant's Exhibit B). On April 11, 2014 the employer sent claimant a certified letter indicating that her employment was considered to have ended as a voluntary resignation because of failure to provide medical information supporting her continued leave after March 12 (Employer's Exhibit Five). The letter did not mention a "grace period" until April 17 for receipt as was referred to in the hearing testimony. Claimant received the letter on April 14, 2014 but still spoke to Roberts by phone on the way to the doctor appointment on April 16 saying she would let her know the outcome of the appointment. Roberts said nothing about the April 11 letter.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not quit but was discharged for no disqualifying reason.

Iowa Code § 96.5-1-d provides:

> An individual shall be disqualified for benefits:
>
> 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:
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> 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.

Iowa Admin. Code r. 871-24.25(35) provides:

> Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa

> Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:
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> (35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:
>
> (a) Obtain the advice of a licensed and practicing physician;
>
> (b) Obtain certification of release for work from a licensed and practicing physician;
>
> (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
>
> (d) Fully recover so that the claimant could perform all of the duties of the job.

Disqualification from benefits pursuant to Iowa Code § 96.5(1) requires a finding that the quit was voluntary. *Geiken v. Lutheran Home for the Aged Ass'n*, 468 N.W.2d 223, 226 (Iowa 1991). 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). *Prairie Ridge Addiction Treatment Servs. v. Jackson and Emp't Appeal Bd.*, 810 N.W.2d 532 (Iowa Ct. App. 2012).

The claimant was not required to return to the employer to offer services after the medical recovery because she had already been involuntarily terminated from the employment while under medical care. Although an employer is not obligated to provide light duty work for an employee whose illness or injury is not work related, the involuntary termination from employment while under medical care was a discharge from employment. Thus, the burden of proof shifts to the employer.

Iowa Code § 96.5-2-a provides:

> An individual shall be disqualified for benefits:
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> 2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
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> 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.

Iowa Admin. Code r. 871-24.32(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.
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> This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.,* 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. Iowa Admin. Code r. 871-24.32(7); *Cosper*, supra; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007).

The employer's argument is well-taken that the claimant was off work for a period of time without medical documentation, however, Roberts knew claimant was unable to set an appointment with her physician until mid-April even though the doctor returned from vacation in late March. The employer also acquiesced to the claimant's continued employment after February 24 and again beyond March 12. While its good intentions are admirable, it is somewhat conflicting that the employer then chose a separation date just a few days before her next known medical appointment without having given her a specific deadline by which to provide medical documentation supporting her absence after March 12. In spite of the expiration of the leave period, since claimant was still under medical care and had not yet been released to return to work without restriction as of the date of separation, no disqualifying reason for the separation has been established. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The July 11, 2014 (reference 01) decision is reversed. The claimant did not quit but was discharged for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

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