

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BETTY M SAINT**  
Claimant

**APPEAL NO. 07A-UI-09851-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GOOD SAMARITAN SOCIETY INC**  
Employer

**OC: 09/16/07 R: 02**  
**Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Good Samaritan Society, Inc. filed an appeal from a representative's decision dated October 15, 2007, reference 01, which held that no disqualification would be imposed regarding Betty Saint's separation from employment. After due notice was issued, a hearing was held by telephone on November 6, 2007. The employer participated by Layne Gross, Administrator; Lori Welch, Human Resources Director; and Rae Ellen Cloke, Dietary Manager. Ms. Saint did not participate as she died on October 26, 2007. No one acting on her behalf responded to the notice of hearing.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Saint began working for Good Samaritan Society, Inc. on June 22, 1999 and last performed services on or about April 26, 2007. She was employed full time as a dietary assistant. On May 3, 2007, she began a general leave of absence because of illness. She had exhausted her Family and Medical Leave Act time in December of 2006. The leave of absence was to expire on July 1, 2007.

Ms. Saint contacted the employer on July 6 and indicated she was ready to return to work. She presented a doctor's statement dated June 1 that released her to return to work on July 9. The employer did not have any work for her in the dietary department as of July 6 as her position had been filled at the end of May. She was not offered work in any other department.

**REASONING AND CONCLUSIONS OF LAW:**

Ms. Saint left her employment on May 3 to begin an approved leave of absence that was to expire on July 1, 2007. Although she did not contact the employer about a return to work until July 6, the fact remains that her position had been filled at the end of May. Therefore, it

appears that the employer would not have had a position for her even if she had made contact on July 1. The employer did not return her to work because a position was not available and not because she failed to maintain contact during the leave of absence. Where an individual is not returned to work at the expiration of a leave of absence, she is considered laid off and is eligible for benefits. See 871 IAC 24.22(2)(1).

Ms. Saint was discharged because the employer did not have a position for her when she attempted to return to work following a leave of absence. Although she had been warned about her attendance in February of 2007, the absences that prompted her discharge were all due to illness and were covered by a leave of absence. The evidence of record does not establish any acts of misconduct on Ms. Saint's part. As such, no disqualification is imposed.

**DECISION:**

The representative's decision dated October 15, 2007, reference 01, is hereby affirmed. Ms. Saint was discharged by Good Samaritan Society, Inc. but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility. Benefits are denied as of October 28, 2007 due to Ms. Saint's death.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs