

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAWN M LONG
Claimant

APPEAL NO. 09A-UI-19025-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRINITY REGIONAL MEDICAL CENTER
Employer

OC: 11/22/09
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Trinity Regional Medical Center (Trinity) filed an appeal from a representative's decision dated December 14, 2009, reference 01, which held that no disqualification would be imposed regarding Dawn Long's separation from employment. After due notice was issued, a hearing was held by telephone on February 1, 2010. Ms. Long participated personally. The employer participated by Ted Vaughn, Human Resources Manager, and Susan Quade, Rehabilitation Supervisor.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Long began working for Trinity on October 23, 2006. She was employed full time as a rehabilitation technician. In March of 2009, she made a written request to take vacation from November 5 through November 20, 2009. The request was approved on the condition that she have a sufficient amount of paid time off (PTO) to cover the absence.

Ms. Long received warnings regarding her attendance on April 9 and May 13, 2009. All of the absences covered by the warnings were due to either her own illness or that of a child. On or about September 22, she was reminded that she needed to have PTO to cover her vacation in November. Approximately one week before she was scheduled to start her vacation, Ms. Long spoke to her supervisor and indicated that she did not have sufficient PTO to cover her vacation. The supervisor told her she could go ahead with her vacation plans. Ms. Long would have been willing to change her plans had the supervisor notified her that taking the vacation would result in her discharge. When she returned to work on November 23, she was discharged.

REASONING AND CONCLUSIONS OF LAW:

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). In order to impose a disqualification from benefits, the evidence must establish that the discharge was prompted by a current act that constituted misconduct within the meaning of the law. 871 IAC 24.32(8). In the case at hand, Ms. Long was discharged after she took a vacation for which she did not have leave time to cover.

Ms. Long received approval in March to be gone on vacation in November. She acknowledged that she knew taking the vacation was conditioned on having enough PTO to cover it. She also acknowledged that she did not have sufficient time accrued to take the time off. She had not squandered her PTO during the period from March until November. The employer acknowledged that none of the absences that caused her warnings in April and May were for reasons not related to her health or that of a child. The fact that there were illnesses that prevented her from working on some dates was beyond Ms. Long's control. Therefore, she did not deliberately or intentionally fail to save sufficient PTO for her vacation.

Because she did not have enough PTO, it was within the employer's prerogative to deny Ms. Long's request when it came time to take the vacation. However, the supervisor told her to go ahead and take the vacation. Given this factor, Ms. Long was justified in believing that she had permission to take vacation in spite of not having enough PTO. By not notifying her of the consequences of taking the vacation, the employer deprived her of the opportunity to forego her plans in order to retain her job. For the reasons stated herein, it is concluded that Ms. Long's discharge was not prompted by any acts of misconduct. The next most prior disciplinary action prior to discharge was on September 22 and would not, therefore, be a current act in relation to the discharge date.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that disqualifying misconduct has not been established. While the employer may have had good cause to discharge Ms. Long, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983).

DECISION:

The representative's decision dated December 14, 2009, reference 01, is hereby affirmed. Ms. Long was discharged by Trinity but misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css