

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALMINA OSMANKIC**  
Claimant

**APPEAL NO: 13A-UI-09596-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**OC: 07/28/13**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's August 16, 2013 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant participated in the hearing. Mary Eilbert, the area manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits, or did the employer discharge her for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in August 2011. She worked full time as a store manager.

The claimant asked the employer if she could take four weeks off to go to Bosnia. The employer granted the claimant three weeks off, one week of paid vacation and two weeks that were not paid. Eilbert told the claimant the employer's corporate office does not allow anyone to take four weeks off from work. The claimant made the comment she would get a doctor's note for the fourth week.

The claimant worked on June 30, 2013, and then went to Bosnia. The employer expected her back to work on July 22. The claimant's return flight was scheduled on July 21. When the claimant was in Bosnia, she became ill and could not return to Iowa as scheduled on July 21. The claimant saw a doctor in Bosnia who indicated she could not work July 22 through 30, 2013. The claimant faxed this doctor's statement to her sister. The claimant's sister took the doctor's statement to the employer on July 22.

The claimant flew back to Iowa on July 28. She called Eilbert the morning of July 29 to let the employer know she was back and ready to return to work. The claimant and Eilbert met later on July 29. The employer then told the claimant she no longer had a job because she had not returned to work on July 22.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(1), (2)a.

The facts establish the claimant planned to return to Iowa on July 21 so she could work on July 22. She became ill in Bosnia and faxed a doctor's statement to her sister indicating the claimant could not work July 22 through 30. The employer received the doctor's statement. When the claimant returned to Iowa, she contacted the employer about returning to work. The facts do not establish that the claimant intended to quit her employment. Instead, the employer initiated the employment separation and discharged the claimant.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

It is suspicious that the claimant told the employer before she left for Bosnia that she would get a doctor's note to excuse her for the fourth week she wanted off and ultimately gave the employer a doctor's note indicating she could not work that fourth week or from July 22 through 30. The claimant's testimony that she was ill and unable to travel is supported by the fact that initially her return flight was scheduled on July 21. After the claimant became ill in Bosnia, she rescheduled her return flight on July 28. Without any evidence to refute the claimant had initially planned to return on July 21 or was not ill as the doctor's statement indicated, the facts do not establish that the claimant committed work-connected misconduct. As of July 28, 2013, the claimant is qualified to receive benefits.

**DECISION:**

The representative's August 16, 2013 determination (reference 01) is reversed. The claimant did not voluntarily quit her employment. Instead, the employer discharged the claimant when she did not return to work on July 22. The claimant did not commit work-connected misconduct because she was ill and unable to return to work on July 22, 2013. As of July 28, 2013, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs