IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

KARLA B CORNICK
Claimant

RIVERVIEW SYSTEMS LTD
Employer

APPEAL NO: 12A-UI-14640-DWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/04/12
Claimant: Respondent (5)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's November 29, 2012 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant voluntarily quit her employment for qualifying reasons. The claimant participated in the hearing. Christy Ford, a human resource specialist; Shar Cole, the director of pharmacy; and Carolyn Steifel, the employee health coordinator, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant 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 May 2003. She worked 32 hours a week as an insurance specialist. Cole supervised the claimant.

In 2007, the claimant experienced medical issues as a result of fumes created by heat-sealing equipment. In 2007, the employer's physician gave the claimant permanent restrictions from exposure to chemicals or fumes. The claimant was diagnosed with reactive airway disease symptoms. In 2007, the employer made accommodations and moved the claimant to another department so she would not be exposed to any of the heat sealing fumes. The claimant did not have any problems when she worked in another department.

In February 2011, the employer moved into a new office building. The heat-sealing machine was in a room that was to be closed when used. The fumes from the machine were vented outside. The heat-sealing vent system was not part of the office venting system. When the employer moved the claimant into the new office, she asked if the employer could put cheaper copier and fax into her office so she could do all her work. The employer did not buy the equipment the claimant requested, but accommodated her by having someone else make any necessary copies or sending faxes when the heat-sealing machine room door was closed. The

claimant felt it was safe for her to do her own copying and faxing when the machine was not used and the door was open. The claimant did not have any respiratory problems in the new office until July 3, 2012.

On July 3, the claimant was by the door where the heat-sealing machine was at. The machine was not being used when the claimant was in the doorway, but she experienced respiratory problems. First responders administered oxygen to the claimant for about an hour. The claimant went to an emergency room. An emergency room physician indicated the claimant had hyperventilated. The claimant went to her physician, who restricted her from returning to work. He advised her to see a pulmonologist. The claimant saw the same pulmonologist the employer sent her to in 2007. The claimant saw the pulmonologist on July 17. The pulmonologist restricted her from working. The pulmonologist recommended that the claimant's office be moved away from the heat-sealing machines, such as to the other side of the building.

The employer did not move the claimant's office because there was no place to move her to. The claimant went on FMLA because her doctor had restricted her from working without accommodations. The employer had an air quality test done in the claimant's office. The air quality test indicated the claimant's office area was safe. Since the claimant's worker's compensation claim had been denied by the employer's insurance carrier, the employer did not provide the result of the air quality test to the claimant's pulmonologist. As of the date of the hearing, the claimant's worker's compensation claim has not been resolved and is still disputed.

The claimant's physician's recommendation that she be moved to an area completely away from the heat-sealing machine is a permanent restriction. When the claimant worked for the employer in the new building, the door of the heat-sealing machine room was to be closed when the machine was on. This did not always happen. When it became too hot in the room when employees used the heat-sealing machine, employees opened the door.

The claimant went on FMLA in July and this ended on September 26, 2012. Her physician had not released her to return to work unless the employer moved her office. Based on the air quality test results, the employer concluded the claimant worked in a safe work environment and did not move her office and did not have anywhere to move her office. After her FMLA ended, the employer gave the claimant an opportunity to take an eight-week unpaid leave of absence. The claimant completed the leave of absence paperwork, but crossed out language that she would have voluntarily quit if she could not find another job with the employer 30 days after her leave of absence ended. The leave form stated the employer's policy.

The employer asked the claimant to submit her leave of absence paperwork again without her modifications to the form. The claimant told the employer she had not quit and would not quit. The employer asked her to return to work because the employer concluded she had a safe place to work.

On October 3, the claimant went to work to find out what safe place had been arranged for her to work. The employer informed her that the employer concluded her office was a safe work environment and if she did not return to work or sign the leave of absence paperwork and accept the employer's policy, the employer would consider her to have voluntarily quit because her absence was not considered work related. When the claimant did not complete the necessary leave of absence paperwork again without her modifications, the employer ended her employment and considered her to have voluntarily quit on October 3, 2012.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits 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 do not establish that the claimant intended to or that she wanted to quit. The claimant's pulmonologist restricted her from working unless the employer changed her office by moving her away from the heat-sealing machine room. As of October 3, the claimant had not been released to return to work.

The employer ended her employment after deciding the employer did not need to make accommodations and could not make accommodations for the claimant since her most recent health incident was not considered work related by the employer's insurance carrier. For unemployment insurance purposes the reasons for the claimant's employment ended must be deemed a discharge.

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).

The evidence does not establish that the claimant committed work-connected misconduct. Instead, she was unable to work after July 3 because the employer could not or would not make the necessary accommodations that the claimant's physician required for the claimant to return to work. The claimant did not commit work-connected misconduct and is qualified to receive benefits as of November 4, 2012.

Since the claimant's office was deemed safe, it is difficult to understand why the employer could not have placed a copier and fax in the claimant's office so she would not have to go into the heat-sealing machine room even when it was not being used. The claimant only had problems when she was in or at the door of this room. Even though the employer has not considered the claimant's July 3 health issue work related, it is difficult to understand why the claimant's pulmonologist was not contacted to see if other accommodations such as suggested in this paragraph would have been satisfactory so the claimant could continue her employment.

DECISION:

The representative's November 29, 2012 determination (reference 01) is modified, but the modification has no legal consequence. The claimant did not voluntarily quit her employment. Instead, the employer ended her employment for reasons that do not constitute work-connected misconduct. As of November 4, 2012, 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/tll