

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARBARA E LUKE
Claimant

APPEAL NO. 10A-UI-17019-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CROSSMARK INC
Employer

**OC: 01/31/10
Claimant: Appellant (2)**

Section 96.5(1) – Quit
Section 96.5(2)a – Discharge
Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, Barbara Luke, filed an appeal from a decision dated December 3, 2010, reference 02. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on January 26, 2010. The claimant participated on her own behalf. The employer, Crossmark, did not provide a telephone number where a witness could be contacted and did not participate.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer, was discharged for misconduct sufficient to warrant a denial of unemployment benefits, and whether she is able and available for work.

FINDINGS OF FACT:

Barbara Luke was employed by Crossmark from April 2010 until October 8, 2010 as a full-time supervisor of events. Her duties entailed setting up demonstrations of products in a chain store. She had preexisting conditions of osteoarthritis, as well as deterioration in her hip and knee. The work duties exacerbated these conditions and she sought medical treatment on October 4, 2010.

The physician imposed permanent restrictions of not working more than eight hours per day, no stooping and no lifting more than 25 pounds. Her regular job duties required her to exceed all of these restrictions. She sent a copy of the doctor's note to the corporate human resources department and received an e-mail in response stating the employer could not make any accommodations for her, and notifying her that her supervisor, Mary, would be in contact to discuss her employment.

Before Mary contacted the claimant, Ms. Luke had called the corporate human resources department about an issue on her paycheck. At that time she was informed she had been "let go."

The claimant's prior employment has included being a customer service representative, and a trainer in this area, computer sales and a quality control technician. She has completed an associate degree for respiratory therapy.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

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.

871 IAC 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.

The record establishes the claimant did not quit but was "let go" by the employer when her physical restrictions meant she could no longer perform the essential functions of her job. This is not willful and deliberate misconduct and disqualification may not be imposed.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements

of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The claimant is able to do work which does not require her to violate any of the restrictions imposed by her doctor. She is eligible for benefits.

DECISION:

The representative's decision of December 3, 2010, reference 02, is reversed. Barbara Luke is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css