

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KATIE E MCGOWAN**  
Claimant

**APPEAL NO: 12A-UI-05694-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TOYOTA MOTOR CREDIT CORP**  
Employer

**OC: 04/08/12**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge  
Section 96.5-1 – Voluntary Leaving  
Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Katie E. McGowan (claimant) appealed a representative's May 11, 2012 decision (reference 03) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Toyota Motor Credit Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 7, 2012. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. During the hearing, Claimant's Exhibits A, B, and C were entered into evidence. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct? Is the claimant able and available for work?

**OUTCOME:**

Reversed. Benefits allowed.

**FINDINGS OF FACT:**

The claimant started working for the employer on June 1, 2010. She worked full time as a collection/customer service representative in the employer's Cedar Rapids, Iowa center. Her last day of work was February 16, 2012.

Prior to February 16 the claimant had been on a combination of intermittent FMLA (Family Medical Leave) and short term disability due to suffering from anxiety following the death of her mother; the FMLA covered the claimant through February 19. After February 16, including after

February 19, and through March 28, the claimant called in daily absences for work for the same claimed health reason. She understood that her FMLA availability was exhausted as of March 24, 2012. On March 27 the claimant received a letter dated March 26 from the employer's human resources representative indicating she needed to hear from the claimant by March 30 to discuss the claimant's continued absence; the claimant called the human resources representative on March 28. The representative indicated that the claimant should renew her attempt to obtain additional FMLA coverage for her time off since February 19, indicating that the employer would still need a release to return to work from a doctor, and that the employer would consider the claimant to be on short term disability so that she would not need to be calling in absences on a daily basis. The claimant understood that she had until April 11 to obtain the additional FMLA coverage and the doctor's release.

The claimant scheduled an appointment with her doctor for April 10. She obtained a release from the doctor that day indicating that she was released as able to return to work as of April 11. However, as the doctor had not been regularly treating the claimant in the interim between February 19 and April 10, the doctor was unwilling to sign off on the certification needed for additional FMLA approval.

On April 11 the claimant called the human resources representative and left her a message explaining that she had the doctor's release, but that the doctor was not able to provide her with the necessary FMLA certification; she asked the human resources to contact her as to what she should do. The claimant did not receive a call back from the representative, but on April 14 she received a letter from the employer dated April 13 which indicated that the claimant's employment was ended.

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

A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

Rule 871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). The representative's decision concluded that the claimant was not discharged but that she quit her employment. The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code §96.6-2. As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance. 871 IAC 24.26(21).

The issue in this case is then whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct.

Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason the employer effectively discharged the claimant was her absenteeism. Excessive and unexcused absenteeism can constitute misconduct. 871 IAC 24.32(7). A determination as to whether an absence is excused or unexcused does not rest solely on the interpretation or application of the employer's attendance policy. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. 871 IAC 24.32(7); *Cosper*, supra; *Gaborit v. Employment Appeal Board*, 734 N.W.2d 554 (Iowa App. 2007). Because the final absence was related to properly reported illness or other reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3. To be found able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); 871 IAC 24.22(1). The claimant has demonstrated that as of April 11, 2012 she is able to work in some gainful employment. Benefits are allowed, if the claimant is otherwise eligible.

**DECISION:**

The representative's May 11, 2012 decision (reference 03) is reversed. The claimant did not voluntarily quit and the employer did discharge the claimant but not for disqualifying reasons. As of April 11, 2012 the claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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