

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BONNIE L CLAUSEN**  
Claimant

**APPEAL NO. 11A-UI-13062-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SKYLINE CENTER INC**  
Employer

**OC: 08/21/11**  
**Claimant: Respondent (4)**

Section 96.5-2-a – Discharge  
Section 96-4-3 – Able and Available

**STATEMENT OF THE CASE:**

Skyline Center, Inc. filed a timely appeal from a representative's decision dated September 28, 2011, reference 02, which held the claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on October 27, 2011. The claimant participated personally. Participating on behalf of the claimant was Mr. James Brun, attorney at law. The employer participated by Ms. Lisa Hammond, human resource director, and Ms. Jennifer Green, director of assisted living.

**ISSUE:**

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits and whether the claimant is able and available for work.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Bonnie Clausen began employment with Skyline Center, Inc. on March 2, 2009, and most recently worked as a full-time direct care manager.

Due to a non-work-related illness or injury, Ms. Clausen was unable to report to work after approximately January 22, 2011. The claimant provided medical documentation to the employer of the medical necessity for being off work. Subsequently, the claimant requested and was granted 14 weeks of leave under the Family Medical Leave Act. Ms. Clausen then requested an extension of her leave of absence for medical reasons. On approximately August 11, 2011, the employer approved the request for an extension of the leave of absence and backdated the leave to begin in May 2011, when the claimant's previous Family Medical Leave had been exhausted. The current leave of absence approved by the employer extended until August 31, 2011.

Before the end of the claimant's leave of absence, Ms. Clausen believed that she would be able to return to work because she had been medically released. Both Ms. Clausen and the employer expected the claimant to return to work on or about August 22, 2011. Prior to

reporting to work, however, Ms. Clausen was injured in a fall. Because of her injury, the claimant was instructed by her physician to undergo an evaluation in Moline, Illinois. Ms. Clausen informed Skyline Center, Inc. of her inability to return to work August 22 and requested an extension of her leave of absence, as she was unsure at that time as to when she would be able to return. The claimant's request for an extension of her leave of absence was denied and the claimant was sent a letter discharging her from employment effective August 31, 2011. Although it was later determined that the claimant was physically able to return August 31, the claimant did not know that at the time of her return date. Because the claimant had continued to be on a pre-approved medical leave of absence as of August 31, 2011, and because she had not been released to return by her physician following the most recent medical incident, the claimant did not return to work that day and was discharged.

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

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment

Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992). The Supreme Court of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984), held that excessive unexcused absenteeism is a form of job misconduct. The Court held that the absences must both be excessive and unexcused and held that absences due to illness and other excusable reasons are deemed excused if the employee properly notifies the employer.

In this matter, the evidence in the record establishes that Ms. Clausen was unable to return to work due to medical issues and had provided medical documentation to the employer to support her need to be absent. The claimant had been granted 14 weeks of absence under the Family Medical Leave Act and the employer had extended the claimant's leave of absence until August 31, 2011. The claimant was unable to return to work by a new expected return date of August 22, 2011, because she had another medical incident that caused her doctor to instruct her to attend a physical evaluation because of her most recent fall. The employer was properly notified of Ms. Clausen's inability to report for work on August 22, 2011. The claimant was discharged effective Wednesday, August 31, 2011, because the employer made a business decision to no longer keep Ms. Clausen on its employment rolls. The employer believed that the claimant had been absent too long and she had not returned per a previous doctor's release that would have allowed her to return on August 22, 2011.

Because the evidence in the record established that the claimant was unable to return to work for medical reasons and had properly notified the employer, the claimant was discharged for no disqualifying reason. The claimant remained on a leave of absence until August 31, 2011, and was then unable to report back to work at the expiration of the leave of absence for medical reasons.

The administrative law judge concludes, based upon the evidence in the record, that Ms. Clausen was not able and available for work until the week of September 4, 2011. She was not released to return to work until that week and thus not medically available to return to work or to claim unemployment insurance benefits until the week of September 4, 2011.

**DECISION:**

The representative's decision dated September 28, 2011, reference 02, is affirmed as modified. The claimant was discharged for no disqualifying reason and is eligible to receive unemployment insurance benefits, provided she has met other eligibility requirements of Iowa law. The claimant was not able and available for work until the week beginning September 4, 2011.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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