

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMIE L EGGENBURG
Claimant

APPEAL NO. 09A-UI-17090-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS
Employer

**Original Claim: 09/06/09
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jamie Eggenburg filed an appeal from a representative's decision dated November 4, 2009, reference 03, which denied benefits based on her separation from West Liberty Foods. After due notice was issued, a hearing was held by telephone on December 18, 2009. Ms. Eggenburg participated personally. The employer did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Ms. Eggenburg was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Eggenburg began working for West Liberty Foods in June of 2008. She was last employed full-time as a quality assurance technician. She was off work beginning in June of 2009 under the Family and Medical Leave Act (FMLA) due to back pain. She attempted to return to work in July, but was only able to work two days before again experiencing pain. She went back on FMLA and was later released to return to work in September. She was able to work three days before her back gave out again.

Ms. Eggenburg's job required her to lift boxes weighting from 15 to 25 pounds from a conveyor belt. She sought work that would not require the bending and lifting required in her regular job but the employer did not have any available. After her attempted return to work in September, she was seeing her doctor every two weeks and remained off work on his recommendation. She kept the employer advised of her status. Ms. Eggenburg was told her FMLA would expire on or about October 12 and she would have to return to work by that date or she would no longer have employment. The employer terminated the employment relationship when she was unable to return to work by the designated date.

REASONING AND CONCLUSIONS OF LAW:

The evidence establishes that Ms. Eggenburg's separation was initiated by the employer when she was unable to return to work following exhaustion of all available leave. The employer ended the employment before she could be released by her doctor and attempt a return to work. For the above reasons, the separation is a discharge. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982).

Ms. Eggenburg was discharged because of her attendance. An individual who was discharged because of attendance is disqualified from benefits if she was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused. The absences that prompted Ms. Eggenburg's discharge were due to illness and were properly reported to the employer. Therefore, they are all excused absences. Excused absences may not form the basis of a misconduct disqualification, regardless of how excessive.

The employer may have had good cause to discharge Ms. Eggenburg because of her inability to return to work. However, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons cited herein, benefits are allowed.

DECISION:

The representative's decision dated November 4, 2009, reference 03, is hereby reversed. Ms. Eggenburg was discharged by West Liberty Foods. but misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw