

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BILLIE J MANN
Claimant

APPEAL NO. 10A-UI-09295-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**HOPE HAVEN AREA DEVELOPMENT
CENTER CORP**
Employer

OC: 05/09/10
Claimant: Respondent (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Hope Haven, filed an appeal from a decision dated June 23, 2010, reference 02. The decision allowed benefits to the claimant, Billie Mann. After due notice was issued, a hearing was held by telephone conference call on August 13, 2010. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Human Resources Director Cheryl Stevens and Assistant Administrator Deanne Fields.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Billie Mann was employed by Hope Haven from May 31, 1991 until May 13, 2010 as a full-time direct support professional. She was injured on the job February 6, 2009, had surgery June 24, 2009, and was returned to work with restrictions July 6, 2009. The restrictions were no repetitive lifting, pulling or pushing more than ten pounds, and no work above chest level.

The claimant's regular duties entailed work that would violate those restrictions. While the workers' compensation claim was being adjudicated, the employer provided others to do Ms. Mann's work duties that were outside of those restrictions.

The claimant reached maximum medical improvement April 29, 2010, with the same restrictions and an overall five percent impairment rating. The employer worked with legal counsel to determine if any work was available to the claimant within those restrictions. It was determined no positions were available at Hope Haven that would allow her to work within her restrictions. She was separated on May 13, 2010.

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 claimant was involuntarily separated from her position with Hope Haven. She was not guilty of misconduct, but only of being medically unable to perform any available job. As there was no misconduct, disqualification may not be imposed.

DECISION:

The representative's decision of June 23, 2010, reference 02, is affirmed. Billie Mann is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw