

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAME J SORICK
Claimant

APPEAL NO. 09A-UI-02673-N

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA FAMILY OPTIONS
& COMMUNITY SUPPORTS INC**
Employer

**Original Claim: 01/18/09
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jame Sorick filed a timely appeal from the representative's decision dated February 13, 2009, reference 01, that denied unemployment insurance benefits based upon her separation from Family Focus Options & Community Supports, Inc. After due notice, a hearing was scheduled for and held in Council Bluffs, Iowa, on March 26, 2009. Ms. Sorick participated personally. The employer participated by Mr. Derek Laney, president/operations director. Exhibit One was received into evidence.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered the evidence in the record, finds: Jame Sorick was employed by Focus Family Options & Community Supports as a full-time direct support worker until January 21, 2009, when she was separated from employment. In the position of direct support worker, Ms. Sorick was assigned to work at residential locations providing assistance to impaired or disabled individuals. Upon returning from a doctor's visit that day, Ms. Sorick presented a doctor's statement to Andrea Underwood, the claimant's immediate supervisor and the company's program coordinator. The doctor's limitations that had been imposed because of Ms. Sorick's pregnancy included limitations on bending, lifting, and stooping, and limited Ms. Sorick to working no more than eight hours per day. Ms. Sorick desired to continue working and explored the possibilities of being assigned to an easier resident location, working overnights, or being assigned to a sedentary position within the company while her medical limitations remained in place. The conversation concluded with Ms. Sorick being informed by the program coordinator that the company could not accommodate the limitations that had been imposed by Ms. Sorick's doctor. Ms. Sorick was told that she would be terminated from employment and would have to re-apply for her job after the birth of her baby. The following day, January 22, 2009, Ms. Underwood called the claimant and instructed Ms. Sorick to turn in her company pager and to report the following Monday to

sign her termination documentation. Based upon the statements that had been made to her by the company's program coordinator, who supervised the claimant in the performance of her duties, Ms. Sorick reasonably concluded that she was being discharged by the employer and filed a claim for unemployment insurance benefits on January 24, 2009.

After Ms. Underwood had informed the claimant that she was being terminated and instructed the claimant to turn in her company equipment, the matter was brought to the attention of Derek Laney, the company's president and operations director. A decision was made to offer Ms. Sorick a six-month medical leave of absence when the claimant was contacted by Ms. Underwood on Tuesday, January 27, 2009, about accepting a leave of absence. Ms. Sorick, who had not requested a leave of absence, responded by indicating that she had been discharged by the company and had filed a claim for unemployment insurance benefits. Subsequently, additional offers were made to Ms. Sorick, which included an offer to accommodate her light-duty limitations by assigning the claimant to a light-duty work location six hours per week. The claimant could not live on six hours per week and had not been seeking a change to part-time employment. Later, on February 23, 2009, when the claimant visited the employer's location to obtain her W-2 form, the employer offered additional accommodations. Ms. Sorick did not accept them, as she had been discharged one month previously.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Sorick was discharged from employment. It does.

The evidence clearly establishes that the claimant was unequivocally told that she was being terminated, and the following day she was instructed to turn in her company equipment. The request to turn in company equipment is consistent with the information that the claimant had received the day previously from her immediate supervisor and the company's program coordinator that she had been "terminated."

The question then becomes whether the evidence in the record establishes that Ms. Sorick was discharged for misconduct in connection with the employment. It does not.

The evidence establishes that Ms. Sorick did not request a leave of absence but merely wished to be accommodated based upon her medical condition. The claimant did not indicate in any manner that she was leaving the employment. The evidence, however, establishes that an individual with management authority unequivocally told the claimant that she was being terminated and instructed the claimant to turn in her company equipment. As there was no misconduct associated with Ms. Sorick's conduct, she was discharged for no disqualifying reason. The administrative law judge notes that, subsequently, the employer made a number of offers to the claimant, including part-time work, leaves of absences, and later an accommodation to light-duty assignments. These matters may be a subject of inquiry by Workforce Development regarding whether the claimant subsequently refused an offer of suitable work with this employer.

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.

DECISION:

The representative's decision dated February 13, 2009, reference 01, is reversed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw