

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMINA Y HASHI**  
Claimant

**APPEAL NO. 13A-UI-10822-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AGRI STAR MEAT & POULTRY LLC**  
Employer

**OC: 03/24/13**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated September 12, 2013, reference 01, which denied unemployment insurance benefits finding that the claimant voluntarily quit work on July 29, 2013 by failing to report for work for three days in a row and not notifying the employer of the reason. After due notice was provided, a telephone hearing was held on October 16, 2013. Claimant participated. Participating on behalf of the claimant was Mr. Chris Coppola, Attorney at Law. The employer participated by Ms. Laura Roney, Payroll/HR Assistant and Kathy Clark, Registered Nurse/Workmen's Compensation Claims Associate. Claimant's Exhibits One through Twenty-four were received into evidence.

**ISSUE:**

The issue in this matter is whether the claimant was discharged by the employer under disqualifying conditions or whether the claimant voluntarily left employment with good cause attributable to the employer.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Amina Hashi was employed by Agri Star Meat & Poultry, LLC from September 27, 2011 until July 29, 2013 when she was separated from her employment. Ms. Hashi was employed as a production worker assigned to work three days per week and was paid by the hour. The claimant's last day of work on the job was July 16, 2013. The claimant's separation from employment took place on July 29, 2013.

Ms. Hashi was injured in a work-related incident that had taken place on approximately March 29, 2013. Ms. Hashi was off work by doctor's orders from April 25, 2013 until July 14, 2013. The claimant returned to work on July 14, 15 and worked on July 17. The first day Ms. Hashi worked three hours. After three hours her arm was not tolerating the movement of the machine that she was assigned to. The second day the claimant worked eight hours and experienced pain in her arm and on the third day the claimant was taken to the emergency room because the pain in her arm had escalated. Ms. Hashi was given a note by the physician at that time specifying no further work until she had been seen by her regular physician. Ms. Hashi

was scheduled to have a visit with her regular physician on July 29, 2013. On July 29, the claimant's physician gave Ms. Hashi a note excusing her from work until the following week and limited the claimant to three pounds of lifting. This information was relayed to the nurse manager who had been assigned to Ms. Hashi's claim and who acted as an intermediary between the claimant and her employer regarding the claimant's work injury and her ability to work. Based upon the medical information given to the claimant's nurse manager who had been assigned to her by her employer and the employer's insurance company, Ms. Hashi reasonably concluded that the employer was notified that she was not able to work and could not report for scheduled work with the company. Based upon her physician's medical advice not to return to work until the following week and the notification of the nurse manager of the claimant's inability to report for work, Ms. Hashi reasonably concluded that the employer had provided notice of her inability to report back to work at that time due to pain associated with her previous work injury.

On August 5, 2013, Ms. Hashi attempted to report to the employer's facility to verify her status with the company; however, the claimant was not allowed entry because the claimant had been terminated from employment. It appears that the employer was not notified by the nurse manager assigned to Ms. Hashi's case that the claimant had been deemed unable to work by her physician during this time and believed that the claimant had failed to report to work and had not provided required notification for three or more consecutive workdays in violation of company policy. The claimant was thus considered to be a voluntary and removed from the company's employment rolls.

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

The question before the administrative law judge is whether the evidence in the record establishes that the claimant quit employment by failing to report for scheduled work for three or more consecutive workdays in violation of company policy without providing notice to the employer of the reason for her absences. It does not. The question then becomes whether the evidence in the record establishes that the claimant was discharged from employment under disqualifying conditions. 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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The employer has the burden of proof in establishing disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant 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 misconduct warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988).

In this matter the evidence establishes that Ms. Hashi had previously been injured at work and had been off work for a considerable period of time because of a work injury. The claimant was subsequently allowed to return to work by her physician conditionally but after four days the claimant found that she had not sufficiently recovered to perform her duties and on July 16 she had been taken to the emergency room because of pain associated with her previous work injury. The claimant had been authorized to be off work by her doctor through July 29, 2013. The information regarding Ms. Hashi's inability to report back to work because of continuing medical problems associated with her previous work-related injury was specifically provided to the nurse manager who had been assigned to Ms. Hashi's workmen's compensation claim by her employer and their insurance carrier. The claimant was reasonable in her belief that her inability to report for scheduled work between July 16 and July 29, 2013 had been communicated to the company as their designated medical representative had been specifically informed that the claimant was unable to return to work at that time due to medical reasons. On July 29, 2013, the examining physician provided the claimant a doctor's note stating that the claimant was not able to return to work until the following week and imposed a three-pound lifting limitation and the limitation that the claimant not work with vibrating equipment. This information was also provided to the nurse manager assigned to the claimant by her employer and its insurance carrier. When Ms. Hashi went to the employer's facility on August 5, 2013 to determine her status with the company she was not allowed access and was told that she had been discharged from employment.

The administrative law judge concludes that the claimant's separation date from employment took place on July 29, 2013 based upon the evidence in this record. The administrative law judge further concludes that the claimant did not voluntarily quit her employment but that the claimant was discharged by her employer for no disqualifying reason. The employer had been informed in advance of the claimant's inability to report for scheduled work for medical reasons.

The claimant's failure to report for work on those days is thus considered to be "excused" and her failure to report for on those days does not establish misconduct in connection with the work. The administrative law judge concludes based upon the totality of the evidence in the record that the claimant's discharge took place under non-disqualifying conditions. Unemployment insurance benefits are allowed providing the claimant has met all other eligibility requirements of Iowa law.

**DECISION:**

The representative's decision dated September 12, 2013, reference 01, finding that the claimant voluntarily quit employment by failing to report for work for three or more consecutive workdays without providing notification to the employer is reversed. The claimant was discharged from employment under non-disqualifying conditions. Unemployment insurance benefits are allowed providing the claimant has met all other eligibility requirements of Iowa law.

---

Terence P. Nice  
Administrative Law Judge

---

Decision Dated and Mailed

css/css