

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA D BRITT
Claimant

APPEAL NO. 07A-UI-09076-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PELLA CORPORATION
Employer

OC: 09-02-07 R: 03
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 26, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 17, 2007. The claimant did participate. The employer did participate through Amber Jaworski, Human Resources Representative and Eric Johnson, Human Resources Representative. Employer's Exhibit One was received. Claimant's Exhibit A was received.

ISSUE:

Did the claimant voluntarily quit her employment without good cause attributable to the employer or was she discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a production worker full time beginning April 19, 2004 through April 13, 2007 when she voluntary quit.

The claimant was injured in a serious car accident on October 13, 2006. The car accident was not work related. As a result the claimant was off work beginning on October 13, 2006 receiving short-term disability benefits. On or around April 13, 2007 the claimant was told that she could receive an additional twenty-six weeks of short-term disability benefits, with pay, only if she voluntarily resigned her employment. The claimant was given the option of remaining an employee and being granted an additional twenty-six weeks of leave time, but the leave would be without pay. The claimant had no way to earn a living as she was still in a wheel chair in April 2007 and was physically unable to work at that time. The only way the claimant could keep income coming into her home was to opt for the additional twenty-six weeks of benefits which meant she had no choice but to resign.

The claimant was released to return to work without restrictions in August 2007 and is now currently able to and available for work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment with good cause attributable to the employer.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980).

No Iowa case law specifically address the above situation; but in Larson v. Michigan Employment Security Commission, 140 N.W.2d 777 (Michigan App. 1966), a Michigan court found that a severely injured worker who could not perform his former duties and for whom the alternatives were remaining employed with no income or resigning in order to receive income, was eligible to receive unemployment insurance benefits. The situation here is almost identical. The claimant had no choice but to quit in order to receive an additional twenty-six weeks of paid disability benefits. Under these circumstances, the administrative law judge is not willing to conclude that the claimant's choice to leave her job was a "voluntary" termination of her employment. Her situation, income with no job versus, job but no income, placed the claimant in an untenable position. Her decision to maintain her income was not a voluntary decision to terminate her employment, but rather one to insure that she and her dependents could survive while she recovered from her injuries. The claimant's separation is more properly considered as a discharge.

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 discharged because she was not physically able to return to work on April 13, 2007 without work restrictions. A claimant who is physically unable to return to work due to injury has not committed intentional work-related misconduct. Since the claimant did not voluntarily quit her employment, nor was she discharged for work-related misconduct, benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The September 26, 2007, reference 01, decision is reversed. The claimant did not voluntarily leave her employment without good cause attributable to the employer, but was discharged for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css