

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMANTHA LONG
Claimant

APPEAL NO: 08A-UI-05497-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEHAVIORAL HEALTH RESOURCES INC
Employer

OC: 05/04/08 R: 02
Claimant: Appellant (4/R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Samantha Long (claimant) appealed a representative's June 9, 2008 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 25, 2008. This appeal was consolidated for hearing with one related appeal, 08A-UI-05498-DT. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on March 14, 2005. She worked full time as a case manager in the employer's community service organization providing services to persons with mental disabilities. Her normal work schedule had been Monday through Friday, approximately 8:00 a.m. to 4:30 p.m. Her last day of work was February 7, 2008. Beginning February 8 the claimant went on FMLA (Family Medical Leave) due to complications from pregnancy. The claimant gave birth to twins on February 25, premature from their May 1, 2008 due date.

The claimant's leave expired on May 1, and she was medically released to return to work. The babies were discharged from the hospital; however, the babies' doctor had instructed that they were to stay in an isolated setting until about June 15, meaning that they at least should not be in a group child care situation. The claimant had been unable to find affordable in-home child care. She then sought to return to work under an arrangement where she would work from home or she would work a different shift. Her supervisor had allowed her to do this for a few hours of work during the first few weeks of her leave. However, on April 29 the employer

advised the claimant that it was not going to allow that arrangement for the length of time the claimant was requesting, and indicated it was simply going to “let [the claimant] go” due to her inability to return to her regular work arrangement, with the provision that she could reapply for her position when her babies’ were able to leave the home for child care.

When the babies’ were released to go to into more general child care settings, the claimant recontacted the employer, but learned that her position had been filled.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant’s employment, 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 is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

Absenteeism can constitute misconduct; however, to be misconduct, absences must be both excessive and unexcused. 871 IAC 24.32(7). A determination as to whether an absence is excused or unexcused does not rest solely on the interpretation or application of the employer’s attendance policy. Absences due to properly reported illness or other good cause reasonably outside of the claimant’s control cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. 871 IAC 24.32(7); Cosper, supra; Gaborit v. Employment Appeal Board, 734 N.W.2d 554 (Iowa App. 2007). Because the final absences were related to properly reported illness or other reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed. The employer has failed to meet its burden to establish misconduct. Cosper, supra. The claimant’s actions were

not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.¹

An issue as to whether the claimant was able and available for work under the same basis in which her wage credits were accrued due to an inability to obtain adequate child care until after June 15 arose as a consequence of the hearing. This issue was not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

DECISION:

The representative's June 9, 2008 decision (reference 01) is modified in favor of the claimant. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the issue as to whether the claimant was able and available for work prior to June 15, 2008.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs

¹ The same outcome would result if this case is analyzed as a quit for failure to return to work after a leave of absence. The reason the claimant would have "quit" was to care for her babies as required by their doctor. Upon the babies' release, the claimant sought to return to work, but work was not available to her. Iowa Code § 96.5-1-c; 871 IAC 24.26(8).