

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

KATHLEEN M FINK
1323 PIEDMONT AVE
SUMNER IA 50674-9147

OMEGA CABINETS LTD
1205 PETERS DR
WATERLOO IA 50703

Appeal Number: 06A-UI-06045-DWT
OC: 05/07/06 R: 03
Claimant: Respondent (1/R)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Omega Cabinets Ltd. (employer) appealed a representative's June 1, 2006 decision (reference 01) that concluded Kathleen M. Fink (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant's employment separation was for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 29, 2006. The claimant participated in the hearing. Amy Victor, a human resource representative, and Guy Bolduc, the claimant's supervisor, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 29, 1999. The claimant worked full time in the warehouse. In 2005, the claimant had knee surgery. Even though the claimant received short-term disability, the employer considered the claimant on Family Medical Leave the same time she received short term disability. According to the employer's records the claimant did not have any leave available under FMLA as of April 2006.

In mid-April 2006, the claimant's mother, who had terminal cancer, had pneumonia. The claimant's mother's physician asked the claimant to provide constant care to her incapacitated mother. Although the claimant has a brother, he was unable to care for their mother. The claimant asked the employer for an unpaid leave of absence so she could take care of her mother until she passed away. The employer denied this request. The claimant then used her accrued vacation and sick leave time to take care of her mother in an attempt to remain employed. The claimant used all of her vacation time as of May 5. The claimant understood that if she did not return to work on May 7, the employer would discharge her. The claimant did not return to work on May 7. On May 4, the claimant picked up her personal property that was at work. The employer no longer considered the claimant an employee as of May 8, 2006. The claimant's mother passed away on May 17, 2006.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. A claimant is not disqualified from receiving benefits if a claimant leaves employment for the purpose of taking care of an immediate family member who is ill and immediately returns to work and offers to perform services after the family member recovers, but the employer does not have any work for the claimant to do. Iowa Code § 96.5-1-c.

The facts establish that upon the advice of a physician the claimant left work in mid-April to take care of her terminally ill mother. The claimant used all her vacation and sick leave as of May 5, 2006. The employer no longer considered the claimant an employee as of May 8 because she did not return to work after she had exhausted all of her accrued time off. The employer effectively discharged the claimant as of May 8. Since the employer discharged the claimant as of May 8, the claimant was not required to contact the employer after her mother passed away and offer to return to work under Iowa Code § 96.5-1-c.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or

repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant attempted to maintain her employment relationship by requesting an unpaid leave of absence to take care of her terminally ill mother. Under the facts of this case, the claimant did not commit work-connected misconduct. Therefore, as of May 7, 2006, the claimant is qualified to receive unemployment insurance benefits.

Since the claimant could not work for the employer while she was taking care of her mother, the issue of whether the claimant was able to and available to work until her mother's funeral is remanded to the Claims Section to investigate and issue a written decision. The Claims Section should also consider the issue of whether the claimant has been overpaid any benefits.

DECISION:

The representative's June 1, 2006 decision (reference 01) is affirmed. The employer discharged the claimant as of May 8, 2006, for reasons that do not constitute work-connected misconduct. As of May 7, 2006, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant. The issues of whether the claimant was able to and available for work from May 7 until her mother's funeral and has been overpaid any benefits during this time is remanded to the Claims Section to investigate and issue a written decision.

dlw/kkf