

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTY L FLORES**  
Claimant

**APPEAL NO. 12A-UI-03622-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CEDAR VALLEY HUMANE SOCIETY**  
Employer

**OC: 02/12/12  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Cedar Valley Humane Society filed a timely appeal from a representative's decision dated April 3, 2012, reference 04, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on April 24, 2012. Claimant participated personally. Participating as a witness for the claimant was Mr. Casey Waddell, Claimant's Fiancé. Employer participated by Mr. Bob Citrullo, Executive Director.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Christy Flores was employed by Cedar Valley Humane Society from November 28, 2011 until March 3, 2012 when she was discharged from employment. Ms. Flores held the position of full-time animal care worker and was paid by the hour. Her immediate supervisor was Lindy Sueley.

Ms. Flores was injured in a non-work-related incident on December 12, 2011 and notified the employer of her inability to report for work at that time due to her injury. On February 14, the claimant informed her immediate supervisor that she had been released to return to work. The claimant, however, had a light-duty limitation preventing her from working on her knees. Claimant was told by her immediate supervisor at that time that she could not return to work because she was not fully released. Subsequently, the claimant had at least two other conversations with her immediate supervisor at which time Ms. Flores updated the supervisor regarding Ms. Flores' status and the supervisor, in turn, re-emphasized the need for the claimant to be fully released before she could return to work with the Cedar Valley Humane Society.

On February 22, and 23, the employer attempted to contact Ms. Flores by telephone. The claimant, however, did not receive the messages. A certified letter was then sent to the

claimant's last-known address of record telling her to contact the employer by February 27 or that she would be discharged effective February 28, 2012. The claimant did not receive the letter. Ms. Flores had moved to a different address and the person that signed for the letter did not inform her of the certified letter. The claimant was fully released by her physician effective March 28, 2012. The claimant at that time had been informed that she had already been discharged from employment. Claimant received this information during a discovery call made by Iowa Workforce Development regarding the claimant's unemployment insurance claim.

It is the employer's position that the claimant did not maintain sufficient contact with the employer and keep the employer sufficiently updated on her status and, therefore, was discharged from employment.

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

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. 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.

The employer has the burden of proof in establishing disqualifying job 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. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. Such misconduct must be "substantial". Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation.

In this matter the evidence establishes that the claimant initially kept the employer informed of her inability to report for work due to a non-work-related injury. Subsequently, on February 14, the claimant attempted to return to work but was specifically told by her supervisor that she could not return because she had not been fully released. Claimant had at least two additional conversations with her immediate supervisor about her job status thereafter. Later the employer attempted to contact the claimant by telephone on two occasions but was unable to reach the claimant. The employer also sent a letter to the claimant indicating she would be discharged if the employer did not hear from her by February 28, 2012. The claimant did not receive that letter.

Ms. Flores reasonably concluded that she was on a leave of absence from her employer until she was fully released. Claimant did not suspect the employer was trying to reach her and based upon her most recent conversation with her supervisor, the claimant believed that she should not return to work until she was fully released by her physician. At the time the claimant was fully released effective March 28, 2012, she had already been discharged from employment.

While the decision to terminate Ms. Flores may have been a sound decision from a management viewpoint, the evidence in the record does not establish sufficient, intentional disqualifying misconduct to warrant the denial of unemployment insurance benefits. Benefits are allowed, providing the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated April 3, 2012, reference 04, is affirmed. Claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

pjs/pjs