

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAROL A FLANNIGAN
Claimant

HEROES INC
Employer

APPEAL NO: 12A-UI-10342-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/22/12
Claimant: Appellant (4)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant appealed a department decision dated August 17, 2012, reference 01, that held she voluntarily quit without good cause on May 19, 2012, and benefits are denied. A telephone hearing was held on October 11, 2012. The claimant, and her Attorney, Michele Van Whye, participated. Kevin Bechler, Manager, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment as a full-time vendor/cleaning person on January 2, 2007, and last worked for the employer on May 18, 2012. Claimant started a vacation on May 19, and she suffered a non-job-related foot injury on May 26 that she reported to the employer. The employer granted claimant a 30-day medical leave of absence. The leave required her to return to work by the end of 30-day period.

Claimant stayed in contact with the employer during her leave period. She reported at the end of the 30 days she was not released by her doctor to return to work. The employer manager told claimant she was released from employment but could re-apply when she was given a doctor release. Claimant believes she was released about August 20 to return to work.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes the employer has failed to establish claimant was discharged for misconduct in connection with employment on or about July 26, 2012.

Claimant's initial employment separation was due to a non-job-related injury that occurred in late May 2012. The best evidence is claimant accepted a 30-day medical leave of absence from the injury that expired on or about July 26. The employer witness acknowledges the leave period did not start right away after the injury date.

Claimant's inability to return to work because she had not been released by her doctor is not a period of absence that constitutes job disqualifying misconduct. Once the leave period ended, claimant properly reported she was still healing from her injury and had not been released.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge further concludes claimant was released by her doctor to work about August 20, 2012 and she meets the availability requirements of the law.

DECISION:

The department decision dated August 17, 2012, reference 01, is modified. The claimant was not discharged for misconduct on July 26, 2012. Claimant does not meet the availability requirements of the law until August 20, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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