

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TINA A CARROLL
Claimant

APPEAL NO. 08A-UI-07710-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC
Employer

**OC: 06/29/08 R: 03
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

Tina Carroll filed an appeal from a representative's decision dated August 26, 2008, reference 01, which held her not eligible to receive unemployment insurance benefits as of June 29, 2008, finding the claimant was not available for work as she requested and was granted a leave of absence. After due notice, a telephone conference hearing was scheduled for and held on September 9, 2008. Ms. Carroll participated personally. The employer participated by Fred Metcalf and Brenda Wilson.

ISSUES:

The issues in this matter are whether the claimant was able and available for work and whether the claimant was discharged for misconduct in connection with her work.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from March 26, 2007 until approximately June 17, 2008 when she was released to return to light-duty work due to a previous non-work-related accident. The claimant was not allowed to return to work with a light-duty limitation and was removed from the company employment role when the claimant was unable to return for medical reasons and time away from work under the Family Medical Leave Act had expired.

Ms. Carroll did not request to be placed on the Family Medical Leave but was required to complete Family Medical Leave papers in order to maintain the possibility of being able to return to work at a later date. Ms. Carroll did not voluntarily quit her employment. The claimant's separation took place when the employer was no longer willing to maintain the claimant on employment rolls although she had not been fully released to return to work by her physician. The claimant had been released to return to light-duty work, however, the employer had no light-duty work for the claimant.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes whether the claimant is able and available for work and whether the evidence establishes that the claimant was discharged by the employer under nondisqualifying conditions. It does.

The evidence in the record establishes that the claimant did not voluntarily request a leave of absence from this employer but was required to agree to a leave of absence by the employer. The claimant had been injured in a non-work-related accident and had provided timely notification to the employer of her inability to report for work and the reasons. Subsequently the claimant was released to return to light-duty work, however, the employer by policy, chose not to assign light-duty work to the claimant. When the claimant was not fully released to return to work by her physician at the expiration of her leave of absence, the claimant was discharged by the employer. The claimant's separation took place because the employer had no light-duty work for the claimant and, therefore, the claimant's separation from employment took place not because of intentional disqualifying misconduct but because the employer did not have work for the claimant with the light-duty restriction.

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 administrative law judge finds that the claimant is able and available for work and able to perform other types of duties in the general workforce with the light-duty limitations that has been imposed by her physician.

871 IAC 24.22(2)j(1)(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

For the reasons stated herein the administrative law judge concludes that the claimant's separation from employment took place when the claimant was discharged due to lack of work available with the light-duty restrictions imposed by the claimant's physician.

DECISION:

The representative's decision dated August 26, 2008, reference 01, is hereby reversed. The claimant is able and available for work. Benefits are allowed effective June 29, 2008, providing that the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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