

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHNSON, DEBRA, F
Claimant

APPEAL NO. 13A-UI-04570-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALLEN MEMORIAL HOSPITAL
Employer

OC: 03/24/13
Claimant: Appellant (2)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Deborah Johnson filed a timely appeal from the April 11, 2013, reference 01 decision that denied benefits based on an agency conclusion that she had voluntarily quit without good cause attributable to the employer. After due notice was issued, a hearing was held on May 23, 2013 Ms. Johnson participated. Jill Grover represented the employer. The hearing in this matter was consolidated with the hearing in appeal number 13A-UI-04571-JTT. Exhibits A, B and C were received into evidence.

ISSUE:

Whether Ms. Johnson separated from the employment for reason that disqualifies her for unemployment insurance benefits. The administrative law judge concludes that Ms. Johnson was discharged on February 21, 2013 for no disqualifying reason.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Deborah Johnson was employed by Allen Memorial Hospital as a part-time materials distribution technician (supply clerk) from 1993 and last performed work for the employer on January 9, 2013. On January 10, 2013, Ms. Johnson broke her ankle and tibia in an accident that occurred at home and at a time when she was off-duty. Ms. Johnson knew that she was scheduled to work on January 11, 2013. Tammie Cole, Manager of Distribution, was Ms. Johnson's immediate supervisor. Ms. Johnson notified Ms. Cole of her injury and of her need for time off to undergo surgery. Ms. Cole approved the absence and asked for an update regarding the surgery.

Ms. Johnson underwent surgery on January 15, 2013. The surgery involved placement of a metal plate and five screws. Ms. Johnson was in contact with Ms. Cole before and after the surgery. The employer notified Ms. Johnson that she was not eligible for leave under the Family and Medical Leave Act. The employer nonetheless approved Ms. Johnson for a 30-day non-FMLA "personal leave" of absence effective January 11, 2013. Ms. Johnson provided the employer with appropriate medical certification materials to support her need for the leave of absence.

On January 28, 2013, Ms. Johnson had her first post-surgery follow-up appointment with the orthopedic surgeon, who kept her off work at that time.

On February 5, the employer received a medical release from Ms. Johnson's doctor that indicated she was released effective February 11, 2013 to perform light-duty sedentary work. Ms. Johnson's regular duties did not include sedentary work. The employer notified Ms. Johnson that the employer did not have light-duty sedentary work for her.

On February 15, Jill Grover, Human Resources Business Partner, sent Ms. Johnson a letter dated February 15, 2013. The letter stated as follows.

You have exhausted the 30 day entitlement under a Personal Leave with a job guarantee on 2/9/2013. We are extending our personal leave until your next evaluation with Dr. Gorsche on February 18, 2013. We would like to review your work status provided at that time by your physician to determine if we can accommodate your restrictions.

Please have the enclosed Return to Work/Fitness for Duty form (enclosed) completed by your physician and fax to Allen's Human Resources ...

Please feel free to contact me at ... with any questions or updates regarding your leave.

On February 19, the employer received the Return to Work form back from Ms. Johnson's physician. The document indicated that Ms. Johnson was released to perform light-duty sedentary work for four to six weeks.

On February 21, Ms. Grover sent Ms. Johnson a letter dated February 21, 2013. The letter states as follows:

Human Resources has received a return to work form which indicates you have restrictions. Unfortunately, your department is unable to accommodate these restrictions; therefore, you will not be able to return to work.

Since you have exhausted the 30 day entitlement under a Personal Leave with a job guarantee on 2/9/2013, your employment is now in active and your job is no longer protected and may be filled, based upon company need.

You will need to have a Return to Work/Fitness for Duty form (enclosed) completed by your attending health care provider before you can apply for any currently posted position that you are qualified to apply for.

Since you are considered inactive, your benefits will end on 2/28 2013. You will be mailed COBRA paperwork at that time.

Please feel free to contact me at... with any questions or updates regarding your leave.

At no time did Ms. Johnson notify the employer that she intended to quit the employment. Ms. Johnson had at all times hoped to return to her employment at Allen Memorial Hospital when she was released by her doctor to return without restrictions, since the employer would not allow her to return with restrictions. At the time the employer elected to call the employment

done, Ms. Johnson was transitioning from a soft cast to a walking boot and getting ready to start physical therapy. Ms. Johnson was still using a walker to help her get around.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

This case is similar to another case recently decided by the Iowa Court of Appeals. See Prairie Ridge Addiction Treatment Services vs. Sandra Jackson and Employment Appeal Board, No. 1-874/11-0784 (Filed January 19, 2012). While the Prairie Ridge case has not yet been published, it provides guidance for the administrative law judge to follow in analyzing the present case. In Prairie Ridge, the claimant had requested and been approved for a leave of absence after she was injured in an automobile accident. The employment ended when the employer decided to terminate the employment, rather than grant an extension of the leave of absence once the approved leave period had expired. Like the present case, Ms. Jackson had not yet been released to return to work at the time the employer deemed the employment terminated. The court held that Ms. Jackson had not voluntarily quit the employment. The Court further held that since Ms. Jackson had not voluntarily quit, she was not obligated to return to the employer and offer her services in order to be eligible for unemployment insurance benefits.

The weight of the evidence in the record establishes that the employer discharged Ms. Johnson from the employment on February 21, 2013. There is no indication of any misconduct on the part of Ms. Johnson. Because the discharge was not based on misconduct, the separation that occurred on February 21, 2013 would not disqualify Ms. Johnson for unemployment insurance benefits or relieve the employer of liability for benefits. See Iowa Code section 96.5(2)(a). Ms. Johnson is eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to Ms. Johnson. However, this decision should be read in conjunction with the decision entered in Appeal Number 13A-UI-04571-JTT.

DECISION:

The Agency representative's April 11, 2013, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css