

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROSELEE A SIMPSON
Claimant

APPEAL NO. 12A-UI-08862-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY MEDICAL CENTER
Employer

OC: 06/24/12
Claimant: Appellant (4)

Section 96.5-2-a – Discharge
Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated July 18, 2012, reference 01, which denied benefits finding the claimant voluntarily quit employment without good cause. After due notice, a telephone hearing was held on August 16, 2012. Claimant participated. A witness on behalf of the employer was not available at the telephone number provided. Messages were left. Claimant's Exhibits One and Two were received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct in connection with her employment and whether the claimant is able and available for work.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Roselee Simpson was employed by the Mercy Medical Center beginning in 2008 and last was employed as a full-time switchboard operator working the second shift. Ms. Simpson was paid by the hour. Her immediate supervisor was Andria Cooper.

Ms. Simpson was discharged by Mercy Medical Center by letter dated June 13, 2012 (See Claimant's Exhibit One) which specifically indicated that her employment with the Mercy Medical Center had been "terminated" as of that date. Ms. Simpson had been off work for an extended period of time due to a verifiable medical condition and had not been fully released to return to work. The employer was aware that the claimant was unable to work and the claimant had properly reported her absences to the employer. When the claimant had exhausted family medical leave and other leave that was available to her such as vacation time, she was discharged from employment but was indicated to be eligible for re-hire by the employer.

Ms. Simpson was verified fully able to return to employment as of June 27, 2012 by her physician (See Claimant's Exhibit Two).

REASONING AND CONCLUSIONS OF LAW:

The first issue before the administrative law judge is whether the claimant was discharged under disqualifying conditions. She was 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 this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Conduct 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. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

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.

Inasmuch as the evidence in the record establishes that the claimant was unable to return to work due to a verifiable medical condition and that the employer was aware of the condition and the claimant had properly reported her absences, the administrative law judge concludes that the claimant's discharge from employment took place under non disqualifying conditions.

The next question before the administrative law judge is whether the claimant is able and available for work.

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 evidence in the record establishes the claimant was fully released to return to full-time employment in the general work force effective June 27, 2012 and was able and available for work as of that date.

DECISION:

The representative's decision dated July 18, 2012, reference 01, is affirmed as modified. The portion of the determination finding the claimant voluntarily quit work is modified that the claimant was discharged from employment under non disqualifying conditions. The portion of the determination disqualifying the claimant from the receipt of unemployment insurance benefits is modified holding the claimant ineligible for benefits until June 27, 2012 when the claimant was determined to be fully able to work by her physician. Claimant is eligible to receive unemployment insurance benefits as of that time providing that she meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs