

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**MANDY S PEEL  
1723 VINE ST  
PERRY IA 50220**

**IOWA DEPARTMENT OF HUMAN  
SERVICES – WOODWARD  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-00963-CT  
OC: 12/28/03 R: 02  
Claimant: Appellant (2)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Mandy Peel filed an appeal from a representative's decision dated January 26, 2004, reference 01, which denied benefits based on her separation from the Iowa Department of Human Services (DHS). After due notice was issued, a hearing was held by telephone on February 25, 2004. Ms. Peel participated personally. The employer participated by Ellen Hellman, Food Service Director, and Laurie Bice, Administrative Assistant. The employer was represented by Frank Eckert of Talx UC Express.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Peel began working for DHS on May 28, 2002 as a full-time food service worker. She was off work beginning September 4, 2003 to have her appendix removed. The absence was approved under the Family and Medical Leave Act (FMLA) and Ms. Peel was to return to work on October 14. After she had the appendectomy, Ms. Peel underwent surgery for carpal tunnel syndrome at the end of September. Her doctor led her to believe that she would be released after the carpal tunnel syndrome surgery at about the same time as she would be released by the doctor who performed the appendectomy.

On or about October 14, Ms. Peel advised the employer that she would need to extend her FMLA because she had not yet been released following the carpal tunnel surgery. Her leave was extended through November 14. She came to the workplace on November 14 and advised the employer that she could not return to work because she had injured the arm on which she had surgery. Her leave was again extended and she was to return to work on December 16. Before the expiration of the leave, Ms. Peel presented the employer with a release allowing her to work with the restriction that she not lift over 25 pounds. She would not have been able to perform her normal job with this restriction. On December 15, she requested a further extension of her medical leave. In a letter dated December 17, Ms. Peel was advised that the leave request was denied and that she was being removed from payroll. The leave was denied because she had exhausted all leave available under the employer's policies.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Peel was separated from employment for any disqualifying reason. She did not voluntarily quit the employment. A quit requires an intent to sever the employment relationship accompanied by some overt act of carrying out that intent. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The fact that Ms. Peel kept the employer apprised of her status and continued to request extensions of her medical leave is evidence of her desire to remain employed by DHS. It was the employer's decision to sever the employment relationship as indicated in its letter of December 17. Therefore, the separation is considered a discharge. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982).

Ms. Peel was discharged because she had not been released to full duty and had exhausted all available leave. An individual who was discharged because of attendance is disqualified from receiving job insurance benefits if she was excessively absent on an unexcused basis. Absences which are for reasonable cause and which are properly reported to the employer are considered excused absences. Inasmuch as Ms. Peel's absences were supported by medical documentation, they are considered excused. Excused absences may not form the basis of a misconduct disqualification, regardless of how excessive. For the reasons stated herein, the administrative law judge concludes that the employer has failed to establish that Ms. Peel was discharged for disqualifying misconduct. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated January 26, 2004, reference 01, is hereby reversed. Ms. Peel was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/kjf