

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WENDY A JELLINGS

Claimant

APPEAL NO: 14A-UI-11457-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALLEN MEMORIAL HOSPITAL

Employer

OC: 10/05/14

Claimant: Appellant (4)

Iowa Code § 96.4(3) – Able to and Available for Work

Iowa code § 96.5(2)a – Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's October 29, 2014 (reference 01) determination that denied her benefits as of October 5, 2014, because she was on an approved leave of absence and was voluntarily unemployed. The claimant participated at the November 25 hearing. The employer did not respond to the hearing notice or participate at the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes the claimant is eligible to receive benefits as of November 9, 2014.

ISSUES:

As of October 5 was the claimant on an approved leave of absence?

When was the claimant able to and available for work?

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in December 2005. She worked as an LPN. After the claimant worked on August 2, 2014 she fractured her ankle in an off-the-job accident. The claimant requested and was granted FMLA from August 4 through October 27, 2014 to recover from the surgery for her fractured ankle.

The claimant's physician released her to return to work on October 6 but she could not put any weight on the ankle she had fractured. The claimant asked the employer about doing a desk job or computer work. The claimant's LPN position was not a desk or computer job. The claimant notified the employer she could return to work on October 6 if the employer could accommodate her work restrictions. As a matter of policy, the employer does not allow employees to return to work with work restrictions. The employer did not make accommodations for the claimant to work with work restrictions.

On October 31, 2014 the employer terminated the claimant's employment because she had exhausted her FMLA and had not yet been released to work without any work restrictions. The claimant's physician released her to work without any work restrictions on November 11, 2014. The employer rehired the claimant after she was fully released to work. She began working for the employer again as an LPN on November 19, 2014.

The claimant established a claim for benefits during the week of October 5, 2014. She did not file any weekly claims until she reopened her claim the week of October 26, 2014.

REASONING AND CONCLUSIONS OF LAW:

When a claimant requests and is granted a leave of absence, this period is deemed as a period of voluntary unemployment and a claimant is not eligible to receive benefits when on a leave of absence. 871 IAC 24.23(10). Even though the claimant was released to work with restrictions on October 6, she was unable to perform duties as an LPN until November 11, 2014. As of October 6, the claimant was looking for a tailor-made job to meet her work restrictions. She is not eligible to receive benefits for the weeks ending October 11 through November 8, 2014. She was able to and available for work the majority of the week of November 9, and is eligible to receive benefits as of November 9, 2014.

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

On October 31 the employer discharged the claimant for business reasons. Her FMLA had expired and she had not yet been released to work without any work restrictions. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of October 26, 2014 the claimant is qualified to receive benefits, provided she meets all other eligibility requirements.

Based on the reasons for her employment separation and her work restrictions, the claimant is eligible to receive benefits as of November 9, 2014.

DECISION:

The representative's October 29, 2014 (reference 01) determination is modified in the claimant's favor. The claimant is not eligible to receive benefits for the weeks ending October 11 through November 8, 2014 because she did not establish that she was able to and available for work with the work restrictions she had during this time. The employer discharged the claimant on October 31 for reasons that do not constitute work-connected misconduct. Based on the reasons for her employment separation and her work restrictions, the claimant is eligible to receive benefits as of November 9, 2014. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/can