IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

VELIA M RUIZ
Claimant

SWIFT PORK COMPANY
Employer

APPEAL NO. 14A-UI-04199-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/02/14
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Velia Ruiz filed a timely appeal from the April 17, 2014, reference 01, decision that denied benefits effective March 2, 2014, based on an agency conclusion that she was on an approved leave of absence. After due notice was issued, a hearing was held on May 13, 2014. Ms. Ruiz participated. Aureliano Diaz represented the employer. The parties waived formal notice on the potential issues of whether the claimant was laid off, discharged for misconduct, or voluntarily quit with or without good cause attributable to the employer.

ISSUES:

Whether Ms. Ruiz has been on a leave of absence that she requested and the employer approved since she established the claim for benefits that was effective March 2, 2014.

Whether Ms. Ruiz has separated from the employment for a reason that disqualifies her for benefits or that relieves the employer of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: In June 2013, Velia Ruiz started her full-time employment with Swift Pork Company, a/k/a JBS. Ms. Ruiz last performed work for the employer on March 6, 2014. Ms. Ruiz's usual work hours were 3:45 p.m. to 1:15 a.m. to or 2:00 a.m., Monday through Friday. Though Ms. Ruiz was assigned to the loin boning department her assigned duties varied, from sorting plastic bags, to handling "tenders" that weighed five or six pounds each, to packing and handling boxes weighing 70 pounds each. For a month and a half leading up to February 19, 2014, Ms. Ruiz's supervisor consistently assigned Ms. Ruiz to this heavy-lifting assignment where she had to stretch while lifting 70-pound boxes. The supervisor gave Ms. Ruiz this heavy-lifting assignment despite knowing that Ms. Ruiz was pregnant.

On February 19, 2014, Ms. Ruiz went to the Emergency Room because she was experiencing abdominal pain and pregnancy-related bleeding. An Emergency Room doctor provided Ms. Ruiz with a document that released Ms. Ruiz to return to work on February 24, 2014 with medical restrictions. The medical restrictions were that Ms. Ruiz not lift more than 10 pounds at

a time, not perform any lifting overhead, and that she be provided with one or two restroom breaks during each half of her shift.

Ms. Ruiz presented her medical restriction document to the employer's human resources department on February 20, 2014. On February 24 and 25, the employer assigned Ms. Ruiz first to sort cryvac bags and then to work with the tenders. Ms. Ruiz was able to perform both assignments with her medical restrictions restrictions. The employer then engaged in discussion with Ms. Ruiz about having her doctor relax her medical restrictions so that she could lift greater than 10 pounds. Ms. Ruiz's doctor would not relax the medical restrictions. The employer subsequently notified Ms. Ruiz that she could no longer perform work for the employer until her baby was born or until he doctor relaxed the medical restrictions. This led to March 6, 2014 being the last day Ms. Ruiz performed work for the employer.

REASONING AND CONCLUSIONS OF LAW:

In Wills v. Employment Appeal Board, the Supreme Court of Iowa held that an employee did not voluntarily separate from employment where the employee, a C.N.A., presented a limited medical release that restricted the employee from performing significant lifting, and the employer, as a matter of policy, precluded the employee from working so long as the medical restriction continued in place. See Wills v. Employment Appeal Board, 447 N.W.2d 137 (Iowa 1989). In Wills, the Court concluded that the employer's actions were tantamount to a discharge.

The employer had an obligation to provide the claimant with reasonable accommodations that would allow her to continue in the work. See Sierra v. Employment Appeal Board, 508 N.W. 2d 719 (Iowa 1993).

Iowa Admin. Code r. 871-24.23(10) provides:

> (10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.,* 275 N.W.2d 445, 448 (Iowa 1979).

At no time did Ms. Ruiz request a leave of absence. Instead, Ms. Ruiz requested that the employer reasonably accommodate her pregnancy-related medical restrictions so that she could continue to perform work for the employer. The employer demonstrated that the request for accommodations was reasonable, and that the employer had the ability to provide reasonable accommodations. After Ms. Ruiz presented her medical restrictions document, the employer initially assigned Ms. Ruiz to work with cryvac bags and to work handling the tenders. These were duties Ms. Ruiz had previously performed for the employer and duties that were within her medical restrictions. The employer subsequently decided to no longer provide Ms. Ruiz with this reasonable accommodation and compelled her to separate from the employment.

The evidence in the record establishes a discharge from the employment that was effective March 6, 2014, not a voluntary leave of absence. The discharge was not based on misconduct and would not disqualify Ms. Ruiz for unemployment insurance benefits. Ms. Ruiz is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The claims deputy's April 17, 2014, reference 01, decision is reversed. The claimant has not been on a voluntary leave of absence. The claimant was discharged for no disqualifying reason effective March 6, 2014. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

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James E. Timberland
Administrative Law Judge

_____
Decision Dated and Mailed

jet/pjs