

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRUDY L MCDOWELL
Claimant

APPEAL NO. 08A-UI-10264-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLLAR GENERAL CORP
Employer

**OC: 08/24/08 R: 01
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Dollar General Corporation filed an appeal from a representative's decision dated October 22, 2008, reference 01, which held that no disqualification would be imposed regarding Trudy McDowell's separation from employment. After due notice was issued, a hearing was held by telephone on November 18, 2008. Ms. McDowell participated personally. The employer participated by Michelle Latham, Leave Administrator and Compliance Manager.

ISSUE:

At issue in this matter is whether Ms. McDowell was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. McDowell began working for Dollar General Corporation on November 2, 1999 and last performed services on January 26, 2008. She was always a full-time store manager. She began a medical leave of absence on January 27 because she broke her collar bone at home.

Ms. McDowell was released to return to work on April 9 but the employer did not have work available that was within her restrictions. Therefore, her leave of absence was extended to May 30. On May 14, she presented an additional doctor's statement but still had work restrictions. She was told by the district manager that she was not to return until she could lift as much as 40 pounds as required by her job description. As of May 30, Ms. McDowell had exhausted all available leave. She was subsequently released to return to work without restrictions on August 21. She presented the release to the manger on duty but has not been offered work. She filed a claim for job insurance benefits effective August 24, 2008.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that the employer initiated Ms. McDowell's separation from employment when she was unable to return to work after all available leave was exhausted. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Inasmuch as the separation was due solely to Ms. McDowell's inability to return to work when her leave of absence expired, it must be concluded that she was not discharged for misconduct. As such, the separation was not a disqualifying event.

Even if the administrative law judge were to consider the separation as a quit, there would still be no basis for disqualification. It is undisputed that Ms. McDowell was away from work beginning January 27, 2008 on the advice of a licensed and practicing physician. The employer was under no obligation to return her to work when she presented releases on April 9 and May 14 as she had not completely recovered from her injury as required by Iowa Code section 96.5(1)d. See Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa 1985). However, Ms. McDowell did not file a claim for benefits until after she had obtained a complete release and re-offered her services to the employer in August of 2008. Since no work has been offered since her complete release, she would be entitled to benefits pursuant to section 96.5(1)d.

DECISION:

The representative's decision dated October 22, 2008, reference 01, is hereby affirmed. Ms. McDowell was separated from Dollar General Corporation for no disqualifying reason. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs