

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RENAE M BRACKIN**  
Claimant

**APPEAL NO: 11A-UI-14491-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE UNIVERSITY OF IOWA**  
Employer

**OC: 10/09/11**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's October 27, 2011 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant did not respond to the hearing notice or participate in the hearing. Mary Eggenburg, Joanne Higgins and Donna Muller appeared on the employer's behalf.

Since the claimant did not participate at the hearing and the ability to and availability for work issue had not yet been adjudicated by the Claims Section, this issue was not addressed during the hearing.

During the hearing, Employer Exhibit One was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

**ISSUE:**

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits or did the employer discharge her for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in June 2006 as a full-time custodian. The employer's policy informs employees that if they do not call or report to work for three consecutive workdays, the employer considers the employee to have resigned. The last day the claimant worked was September 25, 2011.

On September 26 or 27, the claimant injured herself. The claimant was not working when she injured herself. On September 27, the claimant called the employer. She was emotionally upset when she reported she had hurt herself and was going to a doctor. The claimant indicated she would have the doctor's office fax the employer a doctor's statement. The doctor's office faxed a statement indicating the claimant had been seen on September 27 and could not report to work until October 3.

The claimant did not call or report to work as scheduled on October 3, 4 or 6. On October 6, she called after her shift started to find out what she needed to do to return to work. Since the claimant called after her shift started, the employer had already contacted its legal department about discharging her because her doctor had released her to return to work on October 3. The employer confirmed that the employer had received her FMLA paperwork.

The claimant did not call or report to work on October 7, 8 or 9. On October 10, the employer sent the claimant a letter informing her she was terminated because the employer considered her to have abandoned her employment when she had not called or reported to work on October, 3, 4 and 6 through 9. (Employer Exhibit One.)

The claimant called the employer on October 11 to again ask about her return to work paperwork. The employer told her that the employer considered her to have abandoned her employment because she had not reported to work on October 3 even though her doctor had released her to work that day. The claimant then indicated she had not known when her doctor released her to return to work.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The fact the claimant called the employer on October 6 and 11 to find out about her return to work paperwork, the evidence does not establish that she intended to quit. Instead, the employer initiated the employment separation and discharged her on October 10, 2011.

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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

When the claimant called the employer on October 6, she called after her shift started. The employer could have told her then she was in the process of being terminated, but did not. Since the claimant was calling about her return to work paperwork, the evidence supports her statement that she had not known when her doctor had released her to return to work. The claimant used poor judgment when she failed to talk to her doctor or his office about her return to work date. Since the claimant called on October 6, her failure to call or report to work the next three days cannot be used to establish work-connected misconduct.

The claimant did not call or report to work on October 3, 4 or 6 because of her failure to adequately communicate with her doctor. Problems with communication could have been resolved on October 6, but were not. While the employer established justifiable business reasons for discharging the claimant, the facts do not establish that the claimant intentionally disregarded the employer's interests when she did not call or report to work on October 3 or 4, and did not call before her shift started on October 6. As of October 9, 2011, the claimant is qualified to receive benefits.

**DECISION:**

The representative's October 27, 2011 determination (reference 01) is reversed. The claimant did not voluntarily quit her employment. Instead, the employer discharged her for business reasons. The claimant used poor judgment, but she did not commit work-connected misconduct. As of October 9, 2011, the claimant is qualified to receive benefits, provide she meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css