

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA A FELLER
Claimant

APPEAL NO: 11A-UI-14166-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS ENTERPRISES INC
Employer

**OC: 10/02/11
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge
Iowa Code § 96.4(3) – Able to and Available for Work

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's October 24, 2011 determination (reference 02) that disqualified her from receiving benefits and held the employer's account exempt from charge because she voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant participated in the hearing with her witness her husband, Peter Feller. Kris Mananny represented the claimant. The employer notified the Appeals Section that the employer did not contest the claimant's receipt of benefits and elected not to participate in the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUES:

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?

Is the claimant able to and available for work as of October 2, 2011?

FINDINGS OF FACT:

The claimant started working for the employer on May 31, 2011. The employer hired the claimant as a seasonal employee to pack ice cream.

In September 2011, the claimant started experiencing health issues that prevented her from working some days. Every time the claimant was absent, she provided a doctor's note verifying she had been ill and unable to work certain days. The claimant kept the employer updated about her health issues.

In late September after her physician informed the claimant she could return to work, she contacted her supervisor. She then learned she no longer needed to call because the employer was in the process of laying off seasonal or summer employees. The claimant's supervisor told the claimant she no longer worked for the employer.

The claimant established a claim for benefits during the week of October 2, 2011. After the claimant established her claim, she has looked for work every week and is available for and able to work. The claimant did not have any work restrictions after late September.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. While the claimant was unable to work at various times in September, the facts do not establish she intended to quit. Instead, she kept the employer informed about her health issues. When the claimant had been released to work in late September 2011, she learned she no longer needed to contact the employer because they were in the process of laying off summer employees. The claimant was hired as a summer employee. For unemployment insurance purposes, the employer discharged the claimant.

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).

The evidence does not establish that the claimant committed work-connected misconduct. Instead, she and others were laid off from work because the employer no longer needed seasonal, summer employees. The claimant's employment separation does not disqualify her from receiving benefits.

Each week a claimant files a claim for benefits, she must establish she is able to and available for work. Iowa Code § 96.4(3). The evidence indicates that when the claimant established her claim for benefits, her physician had released her to work without any work restrictions. The claimant looked for work each week that she applied for benefits. The facts establish the claimant is able to and available for work as of October 2, 2011.

DECISION:

The representative's October 24, 2011 determination (reference 02) is reversed. The claimant did not voluntarily quit her employment. Instead, the employer laid her off from work for business reasons or discharged her for reasons that do not constitute work-connected misconduct. As of October 2, 2011, the claimant is qualified to receive benefits. The claimant

established that as of October 2, 2011, she is able to and available for work. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css