

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BONNIE J CRAWFORD

Claimant

APPEAL NO. 09A-UI-11271-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

Original Claim: 05/31/09

Claimant: Appellant (4)

Section 96.5(2)a – Discharge for Misconduct

Section 96.4(3) – Able and Available

Section 96.6(2) – Timeliness of Appeals

STATEMENT OF THE CASE:

Bonnie Crawford filed an appeal from a representative's decision dated July 24, 2009, reference 01, which denied benefits effective March 9, 2009 on a finding that she was not able to work due to an injury. After due notice was issued, a hearing was held by telephone on August 24, 2009. Ms. Crawford participated personally. The employer participated by Kathy Edwards, Manager.

ISSUES:

At issue in this matter is whether Ms. Crawford has satisfied the availability requirements of the law since filing her claim effective May 31, 2009. There is also an issue as to whether she was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: the representative's decision that is the subject of this appeal was mailed to Ms. Crawford at her address of record on July 24, 2009. She was out of town when the decision was mailed and did not receive it until her return on August 7. Her appeal was filed on August 7, 2009.

Ms. Crawford began working for Casey's Marketing Company on August 16, 2006. She worked approximately 24 hours each week as a cook. She left work on March 9, 2009 because of an injury suffered away from work. She suffered torn tendons in her right foot. She presented the employer with a doctor's statement dated May 6 releasing her to light duty. The doctor advised that she stay off her feet, a recommendation that prevented her from performing her normal job as a cook. Ms. Crawford was told at that time that she probably would not be allowed to return to work.

The doctor's note of May 6 indicated that Ms. Crawford was expected to be released to full duty on June 10. She notified the employer on June 10 that she still had not been released to full

duty. Therefore, the employer terminated her employment on June 12, 2009. The fact that she still did not have a full release was the sole reason for Ms. Crawford's separation.

REASONING AND CONCLUSIONS OF LAW:

An individual has ten days in which to appeal from a representative's decision. Iowa Code section 96.6(2). Ms. Crawford was not at home in order to receive the representative's decision in a timely manner. She acted with due diligence in filing an appeal the same day she returned home and discovered the decision in her mail. For the above reasons, the appeal filed on August 7, 2009 shall be deemed timely filed.

When Ms. Crawford filed her claim for job insurance benefits effective May 31, 2009, she was off work due to an injury that was not work-related. The injury was such that it prevented her from performing her normal job duties. Because the injury was not work-related, the employer was not obliged to return her to work without a complete release. See Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa App. 1985). Inasmuch as she was still under restrictions and unable to perform her normal job when she filed her claim for benefits, benefits are denied as of May 31, 2009.

As of June 12, 2009, Ms. Crawford was separated from work at the employer's initiative. 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). Ms. Crawford was discharged solely because she did not have a full release that would enable her to perform all of the functions of her job. Her absences were validated by her doctor and are, therefore, excused absences. Excused absences may not form the basis of a misconduct disqualification, regardless of how excessive. For the above reasons, it must be concluded that her separation was not a disqualifying event.

Workforce Development issued a decision on August 11, 2009, reference 02, allowing benefits to Ms. Crawford effective August 2, 2009 based on medical evidence releasing her to full duty.

DECISION:

The representative's decision dated July 24, 2009, reference 01, is hereby modified. Ms. Crawford is not eligible to receive job insurance benefits from May 31 through August 1, 2009, as she was not able to work within the meaning of the law. She was separated from Casey's Marketing Company on June 12, 2009 for no disqualifying reason. Benefits are allowed effective August 2, 2009, provided Ms. Crawford is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw