

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRENDA L BAILEY
Claimant

APPEAL NO. 14A-UI-00007-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA PHYSICIANS CLINIC MEDICAL
FOUNDATION**
Employer

**OC: 11/24/13
Claimant: Appellant (2)**

Section 96.5-1 - Voluntary Quit
Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

Brenda Bailey (claimant) appealed a representative's December 17, 2013, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Iowa Physicians Clinic Medical Foundation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 27, 2014. The claimant participated personally. The employer participated by Susan Mikels, Human Resources Business Partner.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 25, 1994 as a full-time clinical nurse. She requested and was granted Family Medical Leave (FMLA) from June 4 through August 27, 2013. The claimant's FMLA expired and her physician had not returned her to work since June 18, 2013. The employer terminated the claimant on September 13, 2013. The claimant's physician has still not released the claimant to return to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant is eligible for unemployment insurance benefits.

Iowa Code section 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.

871 IAC 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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Issues surrounding separations of employment for medical reasons and subsequent entitlement to unemployment insurance benefits are among the most challenging in unemployment insurance law. The evidence in this case showed that the claimant was unable to return to work even after she had exhausted her FMLA leave. This separation is a non-disqualifying discharge and the claimant is eligible for unemployment insurance benefits provided she meets all other eligibility requirements. Benefits are allowed.

The next issue is whether the claimant was able and available for work. For the following reasons the administrative law judge concludes she is not.

871 IAC 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness, she is considered to be unavailable for work. She is considered to be unavailable for work after June 18, 2013, because her physician indicated she was not able to work. The claimant is disqualified from receiving unemployment insurance benefits beginning June 18, 2013, due to her inability to work.

DECISION:

The representative's December 17, 2013, decision (reference 01) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed. However, the claimant is disqualified from receiving unemployment insurance benefits beginning June 18, 2013, due to her inability to work.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs