

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICKI L MEYERS
Claimant

APPEAL NO. 10A-UI-11506-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNIPARTS OLSEN INC
Employer

OC: 07/18/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated August 13, 2010, reference 01, which denied benefits upon a finding that the claimant voluntarily quit work because of a non-work-related illness or injury. After due notice, a telephone hearing was held on October 28, 2010. Claimant participated personally. Although notified, the employer did not respond to the hearing notice and did not participate. Claimant's Exhibit One was received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits and whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Vicki Meyers was employed by Uniparts Olsen from August 4, 2008 until July 19, 2010 when she was discharged by the employer. Ms. Meyers worked as a full-time production worker and was paid by the hour.

Ms. Meyers began an approved leave of absence on April 5, 2010 because of depression and anxiety related to the death of her daughter. The employer set July 19, 2010 as the claimant's return to work date. Prior to the end of the claimant's leave of absence Ms. Meyers informed the employer that she had not been released to return to work by her medical practitioner. Ms. Meyers was informed that if she did not return to work on July 19, 2010 with a full release she would be discharged from employment. When the claimant was unable to provide a full release, her employment was terminated by Uniparts Olsen Inc.

Ms. Meyers continued to be under the care of her medical practitioner/psychiatrist until August 11, 2010 when she was fully released to return to gainful employment. (See

Exhibit One). The claimant has actively and earnestly sought employment with new employers by contacting perspective employers each week that she claimed benefits.

REASONING AND CONCLUSIONS OF LAW:

Based upon the evidence in the record the administrative law judge concludes that the claimant did not voluntarily quit employment but was discharged by the employer. In discharge cases the employer has the burden of proof. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify denial of unemployment benefits. Misconduct that may be serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant the denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa 1992).

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 evidence in the record establishes that Ms. Meyers did not choose to voluntarily quit employment but that she was discharged when she was unable to return to work on July 19, 2010 with a full doctor's release. The claimant continued to be under the care of her medical practitioner/psychiatrist until August 11, 2010 when she was fully release to return to gainful employment.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge concludes based upon the evidence in the record that Ms. Meyers was not able and available for work until the week ending August 14, 2010 when she was fully released to return to gainful employment by her psychiatrist. The evidence in the record establishes that the claimant has been able and available for work as of that date and is eligible to receive unemployment insurance benefits providing that she has met all other eligibility requirements of the law.

DECISION:

The representative's decision dated August 13, 2010, reference 01, is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible to receive unemployment insurance benefits beginning the week ending August 14, 2010, providing that she meets all eligibility requirements of the law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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