

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LYDIA JOACHIN

Claimant

APPEAL NO. 06A-UI-11681-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP

Employer

**OC: 10/22/06 R: 03
Claimant: Appellant (4)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Lydia Joachin filed an appeal from a representative's decision dated December 1, 2006, reference 02, which denied benefits based on her separation from Cargill Meat Solutions, Inc. After due notice was issued a telephone conference hearing was scheduled for and held on December 21, 2006. The claimant participated. The employer participated by Erica Waldvogel.

ISSUE:

The issues in this matter are whether the claimant quit for good cause attributable to the employer or whether the claimant was discharged by the employer for disqualifying reasons.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds the claimant worked for this employer from August 3, 2006 until October 19, 2006 when she was separated by the employer. Ms. Joachin worked as a production worker on a full-time basis and was paid by the hour.

On October 16, 2006, Ms. Joachin presented a doctor's statement to the company nurse with a 20-pound limitation for lifting, pulling or pushing. The notation was imposed because the claimant at that time was seven months pregnant. The employer initially attempted to transfer the claimant to work that did not exceed the doctor's limitations. On October 19, 2006, the claimant was called to the nurse's office where management individuals and the nurse reviewed the claimant's limitations and the work that was available. After conferring, management informed the claimant that she was being "laid off" until she no longer had restrictions and that she should call the employer when she was "ready to go back to work."

After being separated from her employment with Cargill Meat Solutions, Ms. Joachin did not seek new employment with other prospective employers due to her pregnant condition. Although the claimant had delivered her baby on December 9, 2006, she had not been released to return to employment by her physician at the time of hearing.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has failed to establish that the claimant voluntarily chose to quit her position with Cargill Meat Solutions. The evidence establishes that the claimant was discharged from employment when the employer did not have, or choose to assign the claimant to work that met the medical limitations that had been imposed by the claimant's physician due to her pregnancy.

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.

The administrative law judge finds that the evidence establishes, however, that Ms. Joachin was not able and available for work within the meaning of the Iowa Employment Security Law following her separation from employment with Cargill Meat Solutions. The evidence establishes that Ms. Joachin did not seek or attempt to secure employment with other prospective employers due to her pregnant condition. The claimant testified that she only maintained contact with her labor union in hopes of later being reinstated or being re-hired by Cargill Meat Solutions. Ms. Joachin testified at the time of her separation she was seven months pregnant and due to her condition was unable to seek or accept other employment. The claimant further testified at the time of hearing (December 21, 2006) she had not yet been released to return to work by her physician.

871 IAC 24.23(1) provides that a claimant is disqualified from receiving unemployment insurance benefits for being unavailable for work. One of the reasons for a claimant being disqualified for being unavailable is if an individual is unable to work for medical reasons and presently not able to perform work due to an illness or medical condition.

For the above-stated reasons the administrative law judge finds that although the claimant's separation from employment with Cargill Meat Solutions was non disqualifying, the claimant is ineligible for unemployment insurance benefits until she has demonstrated that she is able and actively attached to the labor market.

DECISION:

The decision of the representative dated December 1, 2006, reference 02, is modified. The claimant is ineligible to receive unemployment insurance benefits, until she is able to work and has demonstrated an active attachment to the labor market.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs