

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRENDA S CONKLIN

Claimant

APPEAL NO. 08A-UI-06309-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA

Employer

**OC: 05/25/08 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The University of Iowa (employer) appealed a representative's July 1, 2008 decision (reference 01) that concluded Brenda S. Conklin (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant's employment separation was for non-disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 23, 2008. The claimant participated in the hearing. David Bergeon, Lori Lindseth, a human resource generalist, and Melissa Gross, a nurse manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that do not qualify her to receive benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 8, 2007. Initially, the claimant worked full-time, but in August 2007 the claimant reduced her hours, so the employer considered her a $\frac{3}{4}$ employee. The claimant worked as a nurse. Gross supervised the claimant.

The claimant had a sinus infection, which prevented her from working. The claimant's last day of actual work for the employer was January 31, 2008. After several requests for complete medical information from the claimant's physician, the employer received the necessary documentation in late March or early April. The employer ultimately granted the claimant a leave of absence (FMLA) from February 1 through April 24, 2008.

On March 31, the employer sent the claimant a letter informing her that as of April 24 she would have exhausted all her FLMA approved leave and had also exhausted all her accrued sick leave and vacation leave. The letter further told the claimant that if she could not return to work by April 24, she had to provide the employer with additional medical documentation so the employer could decide if she was eligible for non-FMLA leave.

During the months the claimant was not at work, she could not drive, she could not work at a computer, and she needed her family's continual support and help. The claimant was very ill. The antibiotic treatment the claimant's physician tried did not work.

As of April 21, 2008, the claimant's physician had not released her to return to work, because the claimant still had an infection and the same symptoms. The claimant had an appointment to see a specialist on April 24. As of April 21, the claimant understood she needed surgery to get rid of her sinus infection.

On April 21, the claimant talked to Gross and told her nothing with her medical condition had changed. At that time, the claimant knew she needed surgery, but this had not yet been scheduled. (The first appointment the claimant had with her surgeon was April 24.) The claimant indicated she would not be able to return to work until after her surgery. Gross reminded the claimant that if she could not return to work as of April 24, she needed to provide more medical documentation because, based on the current medical documentation, the employer expected her to return to work after April 24. Since the claimant had exhausted all her FMLA, vacation leave, and sick leave, Gross gave her a website to look at so she knew what she needed to provide for a medical leave of absence that was not under FMLA. The claimant reminded Gross she was getting married in May in Hawaii and could not work in May. The claimant was surprised when Gross asked the claimant if she intended to resign. The claimant told her no.

The claimant saw the specialist on April 24 and talked about the upcoming sinus surgery. The claimant did not think to ask for a doctor's statement excusing her from work after April 24. The claimant was scheduled to work at 7:00 p.m. on April 28. As a result of their April 21 conversation, Gross did not know if the claimant would be at work on April 28. When the claimant did not call off by 3:00 p.m., Gross called the claimant to find out if she intended to work. The claimant told Gross she would not be back to work until after her surgery. Gross then informed the claimant that her FMLA had been exhausted and she needed to report to work or she would not have a job because she had not submitted any documentation to support the need for her to receive an extension of her leave of absence after April 24. Gross also suggested that the claimant contact Lindseth. The claimant contacted Lindseth and explained that she had not realized she needed to provide additional documentation for time off after April 24. Lindseth indicated that was unfortunate. Neither Gross nor Lindseth gave the claimant a deadline in which to submit the additional documentation.

The claimant immediately contacted her specialist. He was out-of-town, but his receptionist indicated he would send the employer documentation that the claimant had to have surgery and needed more time off. The surgery was scheduled on June 2. The employer received this documentation from the specialist on May 19, 2008. The claimant called the employer between April 29 and May 2. Although the claimant left messages for the employer to contact her again, neither Gross nor Lindseth returned the claimant's calls. The claimant left for Hawaii on May 2 or 4.

When the claimant did not report to work or provide additional documentation to the employer by April 29, the employer ended the claimant's employment. The employer ended the claimant's employment because she had not returned to work after April 24 and failed to provide the employer with any additional documentation verifying she was unable to work as of April 24. The claimant did not receive her termination letter until late May 2008.

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. The facts establish that the claimant did not intend to quit her employment. The employer initiated the employment separation and ended the claimant's employment as of April 30, 2008.

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 facts establish the claimant's treating physician had not released her return to work as of April 24. Even if the claimant had wanted to report to work on April 28, she was not able to work. As of April 21 the employer knew the claimant was not returning to work until after her surgery. During the April 21 conversation, Gross probably told the claimant she needed to submit additional paperwork to extend her leave beyond April 24. Unfortunately, after Gross asked the claimant if she intended to resign, the claimant did not remember this part of their conversation or she was too shocked about Gross's comment that she failed to comprehend everything Gross told her that day. When the claimant left on April 21, she understood she just needed to let Gross know when her surgery was scheduled.

After the claimant realized she needed to provide additional documentation on April 28, she tried to get that additional information to the employer right away. Since her specialist was out-of-town, the claimant could not provide the employer with additional documentation immediately.

The employer allowed the claimant many weeks to get her initial paperwork submitted for her FMLA leave. On April 24 the claimant should have remembered to get documentation from the specialist to provide verification that she was still unable to work as of April 24. The claimant's failure to provide additional documentation amounts to poor judgment but does not constitute work-connected misconduct.

The employer had been very accommodating when they initially granted the claimant FMLA through April 24. Even though the employer sent the claimant a letter in March telling her she needed to present additional documentation if she could not return to work by April 24, the claimant testified she had no idea she needed to present additional documentation. Since the claimant did not sign for that certified letter, it is not known what her family did for her and what they actually showed her in March and April.

The claimant's failure to provide the additional documentation and the fact she was going to Hawaii for two weeks to get married must have been frustrating for the employer. The evidence, however, indicates the claimant was medicated and sitting in a room with sunglasses on when she was in Hawaii. This supports her testimony that she was unable to work. The claimant's actions on April 28 after Gross called her and her attempt to get the documentation immediately establish that while she was late in taking the appropriate action, she did everything she could to provide the employer with the requested documentation. On April 28 when the claimant finally understood she had to provide additional documentation to the employer, the employer should have given the claimant a reasonable time in which to provide the documentation, but did not.

The employer established business reasons for discharging the claimant. These reasons do not, however, establish that claimant committed work-connected misconduct. As of May 25, 2008, the claimant is qualified to receive benefits.

DECISION:

The representative's July 1, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of May 25, 2008, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw