

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARLENE WITT
Claimant

APPEAL NO. 09A-UI-16347-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HCM INC
Employer

OC: 09/20/09
Claimant: Appellant (4)

Section 96.4-3 – Eligibility for Benefits
Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Darlene Witt filed a timely appeal from an unemployment insurance decision dated October 26, 2009, reference 01, that denied benefits to her. After due notice was issued, a telephone hearing was held December 3, 2009 with Ms. Witt participating. Administrator Jeff Wollem participated for the employer, HCM, Inc.

ISSUES:

Is the claimant medically able to work?
Was the claimant discharged for misconduct?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Darlene Witt began her employment with HCM, Inc. in March 2002. She last worked on February 26, 2009. At that time she began FMLA leave because of kidney problems which continue to this date. Ms. Witt undergoes dialysis three times a week. She has not been released to return to work.

On or about April 15, 2009, at the end of her FMLA leave, the employer inquired as to whether she could return to work. Since she could not return to work at that time, she was discharged.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the separation from employment was a disqualifying event. It was not.

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 of misconduct. The employer has not asserted and the evidence does not establish that Ms. Witt was discharged for misconduct. She was discharged because of a medical condition that prevented her from working. While such a discharge may well be legal, it is not a discharge for misconduct. No disqualification may be imposed as the result of the separation.

The remaining question is whether the evidence establishes that the claimant is medically able to work. It does not.

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".

Ms. Witt testified that she has not been released to return to work by her physician. Therefore, she does not meet the eligibility requirement of being able to work and thus is not eligible to receive benefits at this time. If at some point her physician releases her to return to work with or without restrictions, Ms. Witt should provide that release to the agency along with information as to what kinds of work she would be able to perform.

DECISION:

The unemployment insurance decision dated October 26, 2009, reference 01, is modified. The claimant did not resign from employment. She was discharged under circumstances not constituting misconduct. She is ineligible to receive unemployment insurance benefits at this time, however, because she has not established that she is medically able to work.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs