

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AUDREANA L TURNER

Claimant

APPEAL NO: 13A-UI-08008-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA

Employer

OC: 05/26/13

Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a June 26, 2013 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant's employment separation was for nondisqualifying reasons. The claimant participated in the hearing. Frankie Patterson represented the employer. Katlin Swowalter and Kyle Bruner appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits, or did the employer discharge her for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working as a full-time loan document specialist in November 2010. Swowalter supervised the claimant. The last day the claimant worked for the employer was February 13, 2013. She was ill and unable to work in February.

In February 2013, the claimant did not want to go on a leave of absence. Instead, she wanted to use her PTO time to cover her illness. When she was ill and unable to work for more than two weeks, the employer asked her to complete paperwork so she could be granted a leave of absence to excuse her February absences. The employer sent the claimant a letter in March asking her to complete the necessary documentation for the leave of absence. The claimant completed the requested paperwork.

The claimant had problems getting the medical documentation the employer required for a leave of absence. As a result of her absences, the claimant no longer had health insurance. Her doctor's office told her that she could not get the medical documents without an appointment. The claimant applied for other insurance so she could obtain the requested medication documentation the employer wanted. The employer sent the claimant a letter in April telling her that she had to provide medical documents for her leave of absence to be approved. When the

claimant had problems getting the medical documents, she asked the employer for more time to provide this information. The claimant understood this extension was granted.

The employer sent the claimant another letter on May 16, 2013. This letter informed her that her leave of absence had been denied because she still had not provided the requested medical documents. After the claimant received May 16 letter, she contacted the employer's human resource department and indicated she wanted to resign.

On May 20, the Swowalter talked to the claimant. During this conversation, Swowalter indicated she had been told the claimant wanted to resign. The claimant had changed her mind and told Swowalter she wanted to return to work and was ready to work again. Swowalter did not know what documents the claimant had provided or still needed to provide to the employer. She told the claimant she would contact the human resource department to find out what, if anything, the claimant needed to return to work. Swowalter told the claimant she would call her back with this information.

Swowalter learned the claimant needed to provide a doctor's statement indicating she was released to return to work. When Swowalter tried to call the claimant, she was unable to contact her. The claimant left a message for Swowalter one or two weeks later because she had not heard anything from her. Swowalter did not receive the claimant's message. The employer did not send the claimant a letter informing her that she needed to provide the employer with a doctor's statement indicating she was released to return to work. Since the employer did not contact her after May 20 as Swowalter indicated she would do, the claimant assumed she no longer had a job. She established a claim for benefits during the week of May 26, 2013.

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 evidence establishes the claimant did not return to work after May 20 because of communication issues. Between early March and May 20, the employer wanted medical documentation from the claimant to grant her a leave of absence. After the claimant lost her insurance, she did not make an appointment with her doctor to get these documents. As a result of the claimant's failure to provide the requested medical documentation, the employer denied the claimant's leave of absence. The denial of the leave of absence is **DIFFERENT** than the claimant telling Swowalter on May 20 that she wanted to return to work. The evidence also established that even though Swowalter told the claimant she would contact her to let her know what if anything she needed to return to work, this did not happen. When Swowalter could not reach the claimant by phone, she incorrectly assumed she did not need to send a letter to the claimant. Since the claimant was **NOT** told she needed to provide a doctor's statement indicating she could work and what date she could return to work, the claimant was not given the opportunity to provide this information to the employer.

As of the week of May 26 when the claimant established her claim for benefits, the employer had not scheduled her to work even though the employer knew she wanted to return to work. Even though the employer did not officially terminate the claimant's employment until July 2013, the claimant was unemployed or laid off when she established her claim for benefits the week of May 26, 2013. The evidence does not establish the claimant quit her employment. Instead, she told the employer she wanted to return to work and the employer did not schedule her to work.

The employer initiated the claimant's unemployed status by failing to inform her she had to provide a doctor's release before she would again be scheduled to work. The employer has the burden to prove the claimant became unemployed or 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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The facts do not establish the claimant committed work-connected misconduct. A claimant cannot provide a doctor's release when she was not told she needs to do this before she can return to work. The employer effectively laid off the claimant for failing to provide the doctor's release that she knew nothing about. As of May 26, 2013, the claimant is qualified to receive benefits.

DECISION:

The representative's June 26, 2013 determination (reference 01) is affirmed. The employer effectively laid off the claimant for business reasons. The claimant did not commit work-connected misconduct. As of May 26, 2013, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css