

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PENNY J CARNINE
Claimant

APPEAL NO. 13A-UI-10174-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**LORING HOSPITAL
BECKY PONTIOUS**
Employer

**OC: 08/11/13
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated August 29, 2013, reference 01, which denied unemployment insurance benefits finding that she voluntarily quit work on June 13, 2013 because of a non-work-related illness or injury. After due notice was provided, a telephone hearing was held on October 2, 2013. Claimant participated. The employer participated by Ms. Becky Pontious, Accounting/Human Resource Manager and Ms. Lori Forneus, Chief Clinical Officer. Employer's Exhibits A, B, C, D, and E and Claimant's Exhibits One, Two and Three were received into evidence.

ISSUE:

The issue is whether the claimant was discharged under disqualifying conditions.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Penny Carnine began employment with Loring Hospital in April 2012. Ms. Carnine was employed as a full-time certified nursing assistant and was paid by the hour. Claimant's last day of work on the job was November 18, 2012. At that time the claimant was not able to return to work because of a medical problem associated with her back and side. The claimant received permission from her employer to be absent to attend medical appointments because of her condition. An effort was made to give Ms. Carnine time off work under the provisions of the Family Medical Leave Act, however, the claimant did not qualify. The Loring Hospital then granted Ms. Carnine a medical leave of absence beginning November 20, 2012. The leave of absence was open-ended; the employer expected Ms. Carnine to return to work after becoming physically able to do so.

Ms. Carnine continued to keep the employer informed of her inability to report to work for medical reasons. On January 8, 2013, Ms. Carnine informed the employer that she was in need of surgery and additional medical procedures. Ms. Carnine underwent back surgery on May 13, 2013 and was verified by her doctor as not able to return to work at that time. It was the claimant's belief that her doctor had provided that information to Loring Hospital.

On June 13, 2013, Ms. Carnine received a letter from the hospital stating that the claimant had exhausted all of her paid personal leave and sick time and informing the claimant that she was being moved from the hospital's employment rolls. Claimant was also told at that time that the employer could not guarantee a position for her when she was medically released to return to employment and encouraged the claimant to apply for a new position with the hospital when released. Ms. Carnine was fully released by her physician to return to full employment effective August 8, 2013. Claimant returned to Loring Hospital and informed the employer that she had been fully released but there was no work available to her at that time.

REASONING AND CONCLUSIONS OF LAW:

The first question before the administrative law judge is whether the evidence in the record establishes that the claimant quit employment or was discharged. In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Board, 492 N.W. 2d 438 (Iowa Ct. App. 1992). In this matter the claimant did not quit employment but was separated from her employment in an action initiated by the employer on June 13, 2013 informing the claimant that she was being removed from the company's payroll roster. The next question before the administrative law judge is whether the claimant's separation from employment took place under disqualifying conditions. It did 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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

In discharge cases the employer has the burden of proof in establishing disqualifying conduct on the part of the claimant. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Conduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance 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 Ct. of Appeals 1992).

The evidence in the record establishes that there was a separation from employment that was initiated by the employer in response to the claimant's inability to report back to work when she was medically unable to do so.

The Supreme Court of the State of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive, unexcused absenteeism is a form of job misconduct. The Court held that the absences must both be excessive and unexcused and that the concept includes tardiness, leaving early, etc. The Court further held, however, that absence due to illness or other excusable reasons are deemed excused, providing the employee has properly notified the employer.

The evidence in this case establishes that Ms. Carnine did properly notify Loring Hospital of her inability to report for work for medical reasons and that the employer was aware of the claimant's ongoing medical issues and inability to report to work at the time that it made a management decision to separate Ms. Carnine from her employment effective June 13, 2013.

While the decision to separate Ms. Carnine from her employment may have been a sound decision from a management viewpoint, claimant's separation was not due to intentional, disqualifying misconduct. Upon being fully released to return to full employment, Ms. Carnine attempted to return to employment at Loring Hospital but was told at that time that there were no positions available for her.

For the reasons stated herein, the administrative law judge concludes the claimant's job separation took place under non disqualifying conditions. Unemployment insurance benefits are allowed effective August 11, 2013, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated August 29, 2013, reference 01, is reversed. The claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed effective August 11, 2013, provided the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs