

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BECKY S RAY
Claimant

APPEAL NO. 11A-UI-15506-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACP OF DELAWARE INC
Employer

**OC: 10/30/11
Claimant: Appellant (4)**

Section 96.4-3 – Eligibility for Benefits
Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Becky S. Ray filed a timely appeal from an unemployment insurance decision dated November 23, 2011, reference 01, that disqualified her for benefits upon a finding that she had voluntarily left employment without good cause attributable to the employer. After due notice was issued, a telephone hearing was held January 3, 2012, with Ms. Ray participating. Human Resources Director Kimberly Port participated for the employer, ACP of Delaware, Inc. Exhibit A was admitted into evidence.

ISSUES:

Was the separation a quit or a discharge?

Was the separation a disqualifying event?

Is the claimant eligible to receive unemployment insurance benefits?

FINDINGS OF FACT:

Becky S. Ray was hired by ACP of Delaware, Inc. on October 8, 2007. The employer terminated the employment on October 26, 2011. Ms. Ray had not worked since September 6, 2011, for medical reasons. Ms. Ray's physician had imposed restrictions on her that made it impossible for her to perform her normal duties at ACP. The employer had no work available that met Ms. Ray's restrictions.

Ms. Ray cannot lift over 15 pounds. She can neither sit nor stand for more than a half hour at a time. All other work activities are as tolerated.

Ms. Ray cannot perform her previous job. She has prior experience in home health care, house cleaning, and factory work. She would not be able to perform any of those occupations given her present medical restrictions.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge does not know what evidence was submitted to the fact-finder, but there is no evidence in the appeal record indicating that Ms. Ray voluntarily left employment. The testimony of both witnesses and the claimant's exhibit all establish that the employer initiated the separation. Such a separation is better characterized as a discharge.

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.

Disqualification following a discharge is appropriate if, and only if, it occurred because of misconduct. There is no allegation or evidence of misconduct. No disqualification may be imposed as a result of the separation.

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".

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".

In order to receive unemployment insurance benefits, an individual must be medically able to work and be available for work. If an individual cannot perform his or her regular job, the individual has the burden of establishing what kind of work exists in the individual's local labor market that meets the individual's medical restrictions and for which the individual has the requisite job skills. See 871 IAC 24.22(1)b. The evidence in this record does not establish what kinds of work, if any, Ms. Ray would be able to perform at this time.

DECISION:

The unemployment insurance decision dated November 23, 2011, reference 01, is modified. The separation from employment was not a disqualifying event. The claimant has not established that she meets the eligibility requirements of being able to work and available for work. Benefits are withheld until such time as she provides sufficient evidence to her local workforce center that she meets those requirements.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw