

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY J FEENEY
Claimant

APPEAL NO: 10A-UI-17194-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY HOSPITAL
Employer

OC: 10/31/10
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's December 9, 2010 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Cheryl Knutson, the employee relations manager, 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 employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in July 2006. The claimant worked as a full-time certified nurse assistant. The claimant requested and was granted a leave of absence under the Family Medical Leave Act. The claimant's leave of absence started July 28 and ended September 29, 2010.

The employer sent the claimant a September 16 letter asking if she wanted a 30-day leave extension. The claimant did not return the paperwork necessary for the employer to grant her an additional 30 days of leave. The claimant wanted to work because her physician released her to work full time as of September 30, but she was restricted to working a sit down job. The claimant's job provided hands-on-care to residents and did not allow her to work sitting down.

The claimant provided the employer a copy of her September 30 work release. After reviewing the work the employer had available, the employer informed the claimant they could not accommodate her work restriction and again talked to her about submitting paperwork for an additional 30 days of leave. The claimant did not want to sign the paperwork for an additional 30 days of leave because there was a provision indicating that if she was unable to work at the end of her leave, the employer would consider her to have resigned. If the claimant had been unable to return to work after the additional 30 days, the employer would have granted her an additional 60 days of leave.

When the claimant did not submit the necessary paperwork for more time off, the employer terminated her employment relationship on October 8, 2010, because she was unable to return to working at her position and her FMLA leave had expired.

At her October 18, 2010 doctor's appointment, the claimant's physician released her to return to work without any restrictions. The claimant established a claim for benefits during the week of October 31, 2010.

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 does not establish that the claimant voluntarily quit her employment. Instead, she wanted to return to work with her work restrictions. When a claimant is on an approved leave of absence for a non-work-related reason, the employer is not obligated to accommodate the claimant when she is released with work restrictions that prevent her from performing her job. Iowa Code § 96.5(1)d. The claimant's insistence that the employer should have found job for her to do as of September 30 is without merit.

When the claimant would not submit paperwork the employer required for additional time off, the employer terminated the claimant's employment because she was unable to work when her approved leave of absence ended. 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).

Since the employer discharged the claimant because she was unable to perform her job when her FMLA ended on September 29, the employer did not discharge the claimant for reasons constituting work-connected misconduct. As of October 31, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's December 9, 2010 determination (reference 01) is affirmed. The employer discharged the claimant on October 8, 2010, for business reasons that do not constitute work-connected misconduct. As of October 31, 2010, 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/pjs