IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JACALYN A CLARAHAN Claimant	**APPEAL NO: 11A-UI-14796-DT**
	ADMINISTRATIVE LAW JUDGE DECISION
ACH FOOD COMPANY INC Employer	
	OC: 10/16/11 **Claimant: Appellant (4)**

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Leaving
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Jacalyn A. Clarahan (claimant) appealed a representative's November 4, 2011 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from ACH Food Company, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 8, 2011. The claimant participated in the hearing. William Nelson appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct? Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on June 9, 2008. She worked full time as an order picker on the second shift. Her last day of work was August 17, 2011.

The claimant had missed work periodically prior to August 17; a good share of her absences had been covered by FMLA (Family Medical Leave). Beginning August 18 the claimant again began calling in absences. Her absences were due to a diagnosis of insomnia, anxiety, and depression, and due to taking medication for those conditions which caused her to be dizzy and light headed. Her doctor recommended at that time that she be off work for a period of time as short-term disability until her medications had been properly adjusted.

The claimant's absences through August 31 were covered under FMLA, but as of that date her FMLA eligibility was exhausted. She was sent a letter on August 31 advising her that because her FMLA was exhausted, her additional absences would be treated as unexcused, and she

was placed on suspension. The claimant continued to call in her absences, and in early September she spoke with a human resources assistant to indicate that she had sought short-term disability on her doctor's recommendation, that the initial application had been denied, but that she was appealing. The appeal was not resolved until late October, but was still a denial.

On October 11 the employer sent the claimant a letter advising her that since she had continued to have absences the employer considered to be unexcused after the August 31 suspension, her employment had been terminated.

The claimant continued to be treated by her doctor for her conditions and her reactions to the medications. She saw her doctor on November 9, and at that time he indicated a satisfaction with the claimant's condition so that no further medication adjustments were needed, so that she could have returned to work at that point.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

Rule 871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The representative concluded that the claimant was not discharged but that she had quit by failing to return to work. The administrative law judge notes that the claimant continued to call in her absences, and concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code § 96.6-2. As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance. 871 IAC 24.26(21).

The issue in this case is then whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct

must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason the employer effectively discharged the claimant was her attendance. Absenteeism can constitute misconduct; however, to be misconduct, absences must be both excessive and unexcused. 871 IAC 24.32(7). A determination as to whether an absence is excused or unexcused does not rest solely on the interpretation or application of the employer's attendance policy. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. 871 IAC 24.32(7); Cosper, supra; Gaborit v. Employment Appeal Board, 734 N.W.2d 554 (Iowa App. 2007). Because the final absence was related to properly reported illness or other reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed. The employer has failed to meet its burden to establish misconduct. Cosper, supra. The claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3. A person whose doctor has indicated that they need to remain under treatment and should not work is not able and available for work and not eligible for unemployment insurance benefits. 871 IAC 24.22(1)(a); 871 IAC 24.23(35).

The claimant was not considered able to work by her doctor until after her November 9 appointment. The first week the claimant would have been able and available for work was the week beginning November 13, 2011.

DECISION:

The representative's November 4, 2011 decision (reference 01) is modified in favor of the claimant. The claimant did not voluntarily quit and the employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible. The claimant was not able and available for work and therefore not otherwise eligible through the week ending November 12, 2011. The claimant is able to work and available for work effective November 13, 2011.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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