

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BOBBYE WRIGHT
Claimant

APPEAL NO: 11A-UI-09099-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

BLACK HAWK COUNTY
Employer

OC: 05-22-11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 5, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 7, 2011. The claimant participated in the hearing with Attorney Christopher Spaulding. Douglas Meyer, Human Resources Generalist; Carol Laurie, Director of Health Services; and Amanda Spore, Assistant Director of Health Services, participated in the hearing on behalf of the employer. Both parties waived their right to a formal notice of the separation issue so that it could be addressed in the hearing today.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time certified rehabilitation assistant for Black Hawk County from November 3, 1987 to August 15, 2011. She had previously sustained an injury to her right arm, shoulder and neck but she did not have any medical restrictions. The employer noticed the claimant was not using her right arm and sent the claimant to an occupational health/worker's compensation doctor May 12, 2011. The doctor said the claimant was not able to perform her job duties and took her off work. The injury was subsequently determined to be non-work-related but there is a pending worker's compensation case. The claimant was off work on a medical leave under the Family Medical Leave Act (FMLA) until it was exhausted and then the claimant was on a personal, unpaid leave of absence. The employer issued a letter advising her that if she could not return to work without restrictions by August 15, 2011, her employment would be terminated. The claimant's family physician would not release her to return to work without restrictions by August 15, 2011. Although she was not able to perform her regular job duties, she can perform office work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

The employer has the burden of proving disqualifying misconduct. 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 substantial and 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 evidence establishes the claimant was unable to work due to a non-work-related medical condition. When an employee is unable to work and does not return to work due to a non-work-related medical condition, the separation is typically considered to be a voluntary quit without good cause attributable to the employer. Benefits are then denied until the claimant completely recovers and returns to offer her services to the employer. However, in the case herein, the employer took the first step and discharged the claimant for the same reasons. When the employer initiates a separation, the reasons must constitute work-connected misconduct before a claimant can be denied unemployment insurance benefits. The claimant's separation from

employment was not due to any misconduct on her part nor did she quit her job. Consequently, benefits are allowed provided the claimant is otherwise eligible.

DECISION:

The July 5, 2011, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css