

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

FATIMA ZAHRA LAZAR
Claimant

SWIFT PORK COMPANY
Employer

APPEAL 16A-UI-09513-CL

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/31/16
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1)d – Voluntary Quitting/Illness or Injury

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 26, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a discharge for misconduct. The parties were properly notified about the hearing. A hearing was held in Ottumwa, Iowa on October 17, 2016. Claimant participated personally and through interpreter Belaid Hiyani. Claimant was represented by attorney Philip Miller. Employer did not participate. Claimant's Exhibits A through F were received. Official notice was taken of the administrative record, including the documents from the fact finding interview.

At the outset of the hearing, claimant asked the administrative law judge to hold the employer in contempt for failing to comply with subpoenas issued by the agency. The motion was denied as the administrative law judge has no statutory or other legal authority to hold the employer in contempt. The claimant also requested that the administrative law judge disregard the employer's protest to the claim for benefits and rule in favor of claimant without holding a hearing based on allegedly false statements made by employer during the fact finding interview. This request was denied as the administrative law judge has no legal basis to grant summary judgment on a contested claim where no evidence has been presented that supports a finding claimant is qualified to receive benefits. The claimant also moved to exclude any evidence presented by employer. This motion was dismissed as moot as the employer did not appear for the hearing.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on July 6, 2015. Claimant last worked full time performing packaging. Claimant was separated from employment on August 1, 2016.

On December 4, 2015, claimant injured her right shoulder at work. Claimant reported her injury to employer and received treatment. On June 7, 2016, a doctor issued permanent restrictions to claimant prohibiting her from doing repetitive reaching above her head and repetitive work above shoulder level with her right extremity. Claimant presented the restrictions to employer. Initially, employer honored the restrictions.

On August 1, 2016, employer met with claimant and presented her with a list of jobs she could do going forward. All of the jobs violated claimant's restrictions. When claimant pointed this out, employer stated it had no other work for her and it would call her when it found work that complied with her restrictions.

Claimant called employer on almost a daily basis until August 8, 2016, when employer finally asked her to come in. When claimant arrived, she was not allowed to enter the parking lot gate. The employer had claimant wait for two hours until the human resource department finally told claimant to come back the next morning. Claimant stated she had school the next morning. Claimant previously worked second shift, which did not require her to appear for work until the afternoon. Employer stated that an employee with the human resource department would call her, but she never received any further contact from employer.

REASONING AND CONCLUSIONS OF LAW:

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

If claimant's separation from employment is considered a voluntary quit, it is for a good cause reason attributable to employer.

A claimant is disqualified from receiving unemployment benefits if the claimant left work voluntarily without good cause attributable to the employer. Iowa Code § 96.5(1). A claimant who resigns for health reasons may be considered to have quit for good cause attributable to employer if certain criteria are met. Iowa Code § 96.5(1)(d). When a claimant resigns because of a health condition related to employment, the claimant is considered to have quit with good cause attributable to the employer if the claimant presents competent evidence showing health reasons related to the work justify the resignation, and before resigning the claimant informed the employer of the health condition and that he or she intended to quit unless the problem was corrected or a reasonable accommodation was provided. Iowa Admin. Code r. 871-24.26(6)(b). "Reasonable accommodation" is "other comparable work which is not injurious to the claimant's health and for which the claimant must remain available." *Id.*

Here, claimant has presented competent evidence showing she experienced a health condition caused by or aggravated by employment. Since the claimant offered to work with restrictions, informed employer she would not perform work outside of the restrictions, and no work was available or offered to her, the separation was with good cause attributable to employer.

Alternatively, if claimant was discharged from employment, employer did not establish it was for job related misconduct.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

Claimant refused to perform work that violated her restrictions. Claimant attempted to return to perform work that complied with her restrictions on August 8, 2016, but employer would not let her inside the complex after allowing her to wait for two hours. Employer stated it would contact claimant with an offer of work that met her restrictions, but it never did so. Claimant's actions leading to this separation from employment do not amount to misconduct.

DECISION:

The August 26, 2016, (reference 01) decision is reversed. The claimant voluntarily left the employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

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