

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIFFANY M LEFLORE
Claimant

APPEAL NO. 09A-UI-15073-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HCM INC
Employer

**Original Claim: 10/02/09
Claimant: Appellant (5)**

Section 96.5-2-a – Discharge
Section 96.4-3 – Able to and Available for Work
Section 96.5-5-b – Receipt of Deductible Worker's Compensation Benefits

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 2, 2009, reference 03, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on November 16, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing with her attorney at law, Ryan Beattie, and a witness, Alfred LaFlore. Jeffrey Wollum participated in the hearing on behalf of the employer with witnesses Sandy Izer, Nancy Lunde, and Jeri Gulbrandson. Exhibits One through Nine were admitted into evidence at the hearing. The parties agreed that the issues of whether the claimant is able to and available for work and received deductible workers' compensation benefits could be considered and decided.

ISSUES:

Was the claimant discharged for work-connected misconduct?

Was the claimant able to and available for work?

Is the claimant receiving deductible workers' compensation benefits?

FINDINGS OF FACT:

The claimant worked for the employer as a charge nurse from February 12, 2008, to August 7, 2009.

The claimant injured her back at work on August 7, 2009, and notified the employer about the injury. She was treated for the injury by a physician who excused her from working August 7, 8, and 9, 2009. The doctor's excuse was provided to the employer.

On August 10, 2009, she was again seen by a doctor. She was released to work with a 10-pound weight restriction and substantial restrictions on lifting residents, pushing wheelchairs,

and bending and twisting. The doctor also recommended physical therapy. The doctor's release was provided to the employer.

After the August 10 doctor's statement was received, supervisors tried contacting the claimant by phone but were not able to reach her. She was seen again by the doctor on a scheduled follow-up visit on August 17. The claimant's doctor imposed the same work restrictions and the doctor's statement with restrictions was submitted to the employer.

On August 20, 2009, the claimant again went to the doctor, who decided she needed to be seen by a specialist. Her doctor took her completely off work starting August 20 until she was examined by a specialist in September 3, 2009. She provided this doctor's release to the employer.

On August 25, 2009, the administrator, Jeff Wollum, felt the claimant could have been given work within her restrictions and was not doing enough to communicate with her supervisors. He wrote a letter stating that she was able to work light duty on August 10, but they had not been able to contact her, and she had failed to return their calls. He warned her that if she did not contact him by September 2, 2009, she would be deemed to have resigned her position. The claimant never received the letter, which was returned undelivered.

On September 3, 2009, the employer decided to terminate the claimant for not keeping in contact with the employer about her work status.

The claimant saw the specialist on September 3, 2009. He said she could return to work "pending injection date" with a 20-pound weight restriction. This statement was also given to the employer.

The claimant filed a new claim for unemployment insurance benefits sometime during the week of August 30, 2009, because she learned from her workers' compensation attorney that the employer had discharged her. Her unemployment weekly benefit amount is \$423.00.

The claimant has been receiving temporary total disability benefits from the employer's workers' compensation insurer in the amount of \$425.06 per week starting in August 2009 until the date of the hearing.

The claimant has been incarcerated and unavailable to work since October 22, 2009.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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 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).

While the claimant could have done a better job of keeping in contact with supervisors with the employer, I do not believe she willfully avoided contact with the employer. She was off work for legitimate medical reasons and at the time the decision to terminate was made, she was off work with a doctor's excuse. She is not disqualified based on discharge from employment.

The next issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3. The claimant was not able to work effective August 30, 2009, the effective date of her claim, because she had been taken off work by her doctor. She is receiving temporary total disability benefits, which is evidence that she is unable to work. She has not demonstrated any work that she is able to perform. She also is unavailable for work as of October 22, 2009, due to her incarceration.

Finally, under Iowa Code section 96.5-5-b, an individual shall be disqualified for benefits for any week with respect to which the individual is receiving or has received payment in the form of compensation for temporary disability under the unemployment insurance law of any state or under a similar law of the United States. The claimant's temporary total disability payments exceed her weekly benefit amount and she is disqualified on that basis as well.

DECISION:

The unemployment insurance decision dated October 2, 2009, reference 03, is modified with no change in the outcome of this case. The claimant is not disqualified based on the reasons for her separation from work. She is ineligible for benefits effective August 30, 2009, because she was unable to work due to her work-related injury and was totally disabled. Furthermore, she is ineligible for benefits because her temporary total disability payments exceed her weekly benefit amount. She is unavailable for work as of October 22, 2009, due to her incarceration. To lift these disqualifications will require the claimant to reapply for benefits and show that the circumstances that cause her to be ineligible no longer exist.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw