

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SANDRA T SHARP
Claimant

APPEAL NO. 07A-UI-01679-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VICTOR PLASTICS INC
Employer

**OC: 12/31/06 R: 03
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 8, 2007, reference 01, that concluded she voluntarily left employment without good cause attributable to the employer. A telephone hearing was held on March 5, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Larry Sharp. No one participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full-time for the employer as quality auditor from March 27, 2003, to November 2005. After November 2005, the claimant was off work based on her doctor's recommendation on a medical leave of absence due to a serious medical condition. She kept in regular contact with the employer's human resource department regarding her employment status while she was off work. She was never informed that her employment was in jeopardy due to her being off work.

In early December 2006, the claimant was released by her doctor to return to work with no restrictions in January 2007. On December 18, 2006, her husband called the human resources department to inform the employer that the claimant had been released to return to work and wanted to return to work in January 2007. He left a message with that information because the human resources personnel were not available to take the call. He asked for a return call, but no one with the employer called back.

In early January 2007, the claimant received a letter from the employer informing her that her employment was terminated because the employer considered her to have voluntarily quit. The claimant never intended to quit her employment and never informed anyone that she was quitting.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992).

The unemployment insurance rules provide that if an employer fails to reemploy an individual after a leave of absence, the individual will be considered to have been laid off and eligible for benefits. 871 IAC 24.22(2)j. Finally, the law provides that an individual is qualified to receive benefits if she: (1) left employment because of illness, injury or pregnancy with the advice of a licensed and practicing physician, (2) notified the employer that she needed to be absent because of the illness or injury, and (3) offered to return to work for the employer when recovery was certified by a licensed and practicing physician, but her regular work or comparable suitable work was not available. Iowa Code section 96.5-1-d.

Based on all these provision of the unemployment insurance law, the claimant is qualified to receive unemployment insurance benefits. She stopped working due to illness with the advice of her physician, she notified the employer that she needed to be absent, and she offered to return to work after being released by her doctor but was informed that her employment was terminated. She understood that she was on a leave of absence until she could return to work but was not reemployed after being released to return to work by her doctor. The claimant kept in regular contact with the employer regarding her work status, and her termination was not due to any misconduct. The claimant is qualified to receive unemployment insurance benefits.

DECISION:

The unemployment insurance decision dated February 8, 2007, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css