

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RUTH A MOEN
Claimant

APPEAL NO. 10A-UI-15244-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**HORIZONS UNLIMITED
OF PALO ALTO**
Employer

OC: 10/03/10
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Ruth Moen, filed an appeal from a decision dated October 28, 2010, reference 02. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on December 16, 2010. The claimant participated on her own behalf and was represented by Eldon Winkel. The employer, Horizons Unlimited of Palo Alto (Horizons), participated by Human Resources Manager Pam Beschorner and CEO Ron Askland and was represented by John Brown..

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Ruth Moen was employed by Horizons from January 19, 1990 until September 10, 2010 as a full-time residential instructor. The claimant was on FMLA for a non-work-related medical condition. The available hours were exhausted on September 10, 2010, and she had not yet been released to return to work by her doctor. The employer notified her by certified letter she was discharged.

REASONING AND CONCLUSIONS OF LAW:

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 proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). In the present case, the event precipitating the discharge was the fact the claimant had a medical condition and was not yet released to return to work after her FMLA hours were exhausted. This is not misconduct, as it was not volitional. See *Cosper supra*. Disqualification may not be imposed.

DECISION:

The representative's decision of October 28, 2010, reference 02, is reversed. Ruth Moen is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw