

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

LINDA D LAWMAN
Claimant

APPEAL NO. 18A-UI-06112-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LUTHERAN SERVICES IN IOWA INC
Employer

OC: 05/06/18
Claimant: Appellant (2R)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Linda Lawman (claimant) appealed a representative's May 22, 2018, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Lutheran Services in Iowa (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 14, 2018. The claimant participated personally. The employer participated by Jessica Buskohl, Family Safety Risk Permanency Program Supervisor. The employer offered and Exhibit 1 was received into evidence. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 5, 2017, as a full-time care coordinator. The claimant signed for receipt of the employer's online handbook on July 5, 2017. The claimant suffered from chronic kidney stones. She requested and was granted non-Family Medical Leave (FMLA) from September 27, 2017, to October 23, 2017, when she had twelve stones in her left kidney.

She requested again and leave was granted on March 7, 2018. The claimant was not given any documents related to the leave. The employer knew the leave ended on April 4, 2018. The claimant did not know the date the leave ended. In addition, the claimant was not thinking clearly and in pain. During her leave she had two surgeries. The program supervisor spoke and texted frequently with the claimant. None of the text messages indicated a return to work date or a due date for documentation. On March 22, 2018, the employer sent the claimant documents with a Post-it note that read, "Please complete this & mail back or return with you when you return to work. You will also need a dr.'s note for the time you have had off".

On April 4, 2018, the claimant told the program supervisor she was still unable to return to work. The program supervisor told the claimant that the employer was sending her a letter of termination on April 5, 2018, because the claimant could not return to work. On April 4, 2018, in response to the telephone call, the claimant placed another request for non-FMLA leave of absence in the mail to the employer.

On April 5, 2018, the employer sent a letter of termination to the claimant effective April 5, 2018, that indicated she was terminated because she exhausted her leave. The program supervisor knew the claimant would have been granted another leave had she requested the leave by April 4, 2018. The claimant had a third surgery on April 16, 2018. She believes she was able to return to work at the end of April 2018. She filed for unemployment insurance benefits with an effective date of May 6, 2018.

No written documentation was issued to the claimant informing her of the end of her leave, the date she should apply for another leave, or requirements for applying for a leave.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(1)d provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

The claimant is eligible for unemployment insurance benefits. Issues surrounding separations of employment for medical reasons and subsequent entitlement to unemployment insurance benefits are challenging. The evidence in this case showed that the claimant was placed on non-FMLA leave. She was in pain and not thinking clearly. The employer provided her with no paperwork for guidance as to her rights, responsibilities, and return to work date. . The only note sent to her indicated she could return papers and doctor's notes when she returned to work. The claimant was not given notice that her key to keeping her job was in filing for another leave of absence by April 4, 2018. The employer hid the facts from the claimant when she was vulnerable.

Where an employee did not voluntarily quit but was terminated while absent under medical care, the employee is allowed benefits and is not required to return to the employer and offer services pursuant to the subsection d exception of Iowa Code section 96.5(1). *Prairie Ridge Addiction Treatment Services v. Jackson and Employment Appeal Board*, 810 N.W.2d 532 (Iowa Ct. App.

2012). This was a non-disqualifying discharge and the claimant is eligible for unemployment insurance benefits provided she meets all other eligibility requirements.

The issue of whether the claimant is able and available for work is remanded for determination.

DECISION:

The representative's May 22, 2018, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible. The issue of whether the claimant is able and available for work is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs