

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STACY L GOOD
Claimant

APPEAL NO: 07A-UI-02853-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BETHANY MANOR INC
Employer

**OC: 02/25/07 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Bethany Manor, Inc. (employer) appealed a representative's March 20, 2007 decision (reference 01) that concluded Stacy L. Good (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 5, 2007. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which she could be contacted to participate in the hearing. As a result, no one represented the claimant. Dale Ullestad-Heneke, the director of human resources, and Jamey Cox, the director of finance, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 24, 2006. The claimant worked as a full-time account assistant. The claimant went on a medical leave from December 4, 2006, through February 5, 2007. Initially, the claimant's leave was to end on January 30, but when she worked on January 8 and 12, the employer extended her leave to end on February 5, 2007.

The claimant went on the leave because she was pregnant. After her child was born, the newborn child had medical issues that required surgery. On January 19, 2007, the claimant informed the employer by email that her child had undergone a surgical procedure that went well and the claimant would keep the employer updated. On January 22, 2007, the employer responded and asked the claimant if she would be able to come back to work when her leave ended.

On January 30, 2007, the claimant contacted the employer to inform the employer that her child was to have another surgical procedure on February 1. As a result, the claimant was unable to return to work on February 5 and did not know when she would be able to return to work. Fox informed the claimant on January 30 that if she did not return to work on February 5, her job would be offered to another person. The employer sent the claimant a letter on February 6 informing her she no longer had a job because she had not returned to work the day before.

The claimant established a claim for unemployment insurance benefits during the week of February 25, 2007. As of April 5, 2007, the claimant had not filed any weekly claims.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code sections 96.5-1, 2-a. The employer initiated the employment separation when the claimant did not return at the end of her authorized leave. The employer knew on January 30 the claimant was unable to return to work on February 5 because the claimant's child would be recuperating from a February 1 surgical procedure. The employer informed the claimant on January 30 that another person would replace her and she no longer had a job with the employer.

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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The facts do not establish that the claimant intentionally failed to return to work. She was unable to return to work on February 5, 2007. The employer established compelling business reasons for discharging the claimant. The facts do not, however, establish that the claimant committed work-connected misconduct. Therefore, she is not disqualified from receiving unemployment insurance benefits.

Since the claimant has not filed any weekly claims, the issue of whether the claimant is available to work as of February 25, 2007, does not need to be addressed. If the claimant reopens her claim, she must then establish she is available for work.

DECISION:

The representative's March 20, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of February 24, 2007, the claimant is qualified to receive unemployment insurance benefits. Since the claimant has not filed any weekly claims, the issue of whether she is available for work does not need to be addressed. If the claimant reopens her claim, she must then establish that she is available for work. The employer's account may be subject to charge if the claimant reopens her claim and files for unemployment insurance benefits.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs