

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEPHANIE N HOF**  
Claimant

**APPEAL NO: 14A-UI-09147-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE SERVICES INC**  
Employer

**OC: 08/03/14**  
**Claimant: Appellant (4)**

Iowa Code § 96.5(2)a – Discharge  
Iowa Code § 96.4(3) – Ability to and Availability for Work

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's August 24, 2014 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant participated at the September 23 hearing. Michael Payne appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant's employment separation does not disqualify her from receiving benefits, but she is not eligible to receive benefits until August 10, 2014.

**ISSUES:**

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

When is the claimant able to and available for work when her doctor does not release her to work until August 11, 2014?

**FINDINGS OF FACT:**

The employer, a temporary employment firm, assigned the claimant to a job at Pella on March 31, 2014. When the claimant worked at one job duty that required her to complete repetitive tasks, her shoulder started hurting. Pella personnel wanted the claimant to have a physician examine her shoulder. The claimant followed Pella personnel instructions and went to a doctor on July 23, 2014.

As a result of examining the claimant's shoulder, the doctor restricted the claimant from working until August 11, 2014. The physician indicated the claimant's pain was the result of repetitive motion.

On August 8, one of the employer's employees informed the claimant that her assignment at Pella had ended. The claimant did not understand why her assignment ended. Between August 8 and 25, the claimant worked with the employer to get another assignment. The claimant interviewed for other job assignments. The claimant started another assignment for one of the employer's clients on August 25, 2014.

The claimant established a claim for benefits on August 8 or during the week of August 3, 2014. The claimant filed claims for the weeks ending August 9 through 23, 2014.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The employer asserted the claimant quit because she was restricted from working from July 23 through August 11 for non-work related reasons. Even though the employer's worker's compensation insurance company denied the claimant worker's compensation benefits this does not mean the claimant's shoulder pain was not the result of doing a repetitive job for Pella.

The facts do not establish the claimant quit her employment on July 23. Instead, she was restricted from working and informed the employer about this restriction. The claimant planned to return to work at Pella when she was released to work again.

On August 8, the employer told the claimant her job assignment at Pella was over. The employer did not give the claimant any explanation for her Pella assignment ending. The fact the employer worked with the claimant to get her another job assignment supports a conclusion that the claimant did not commit work-connected misconduct.

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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer's client, Pella, may have had business reasons for ending the claimant's assignment, but the evidence does not establish that the claimant committed work-connected misconduct. Therefore, based on the reasons for the claimant's employment separation from the Pella assignment she is qualified to receive benefits as of August 3, 2014.

Each week a claimant files a claim for benefits, she must be able to and available for work. The claimant was not released to work until August 11, 2014. Therefore, she was not able to and available for work the week ending August 9. Based on the reasons for the claimant's employment separation and her ability to and availability for work, she is not qualified and eligible to receive benefits until the week of August 10, 2014.

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

**DECISION:**

The representative's August 25, 2014 determination (reference 01) is modified in the claimant's favor. The claimant did not voluntarily quit and the employer did not discharge her for work-connected misconduct. As of August 3, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements.

Since the claimant was restricted from working until August 11, 2014, the claimant is not qualified and eligible to receive benefits until August 10, 2014.

The employer is not a base period employer and its account will not be charged during the claimant's current benefit year.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs