

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHERI LEE**  
Claimant

**APPEAL NO. 08A-UI-06279-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IA DEPT/HUMAN SVCS-AREA & COUNTY**  
Employer

**OC: 05/25/08 R: 02**  
**Claimant: Respondent (1-R)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated June 30, 2008, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on July 23, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Tracy Taylor participated in the hearing on behalf of the employer with witnesses, Angela Lathrop and Ron Bruett. Exhibits A through C and One were admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked for the employer as a clerk specialist from October 1, 2000, to May 27, 2008. She was hired to work full time. Angela Lathrop was the claimant's supervisor.

The claimant suffers from depression, anxiety, and diabetes. She has received psychiatric treatment for her mental health issues for several years. The claimant was granted leave for this condition under the Family and Medical Leave Act (FMLA) and exhausted the FMLA leave available at the end of February 2008. She also had exhausted all her sick leave and vacation. The claimant supplied a medical statement from her psychiatrist, C. Scott Jennisch, M.D., certifying her need to take intermittent leave for her mental health issues starting February 28, 2008. Based on the doctor's statement and pursuant to the union contract, the employer granted the claimant a 90-day unpaid medical leave from February 28 and ending May 27, 2008. The claimant was informed that she had until May 15, 2008, to request any additional medical leave without pay.

From February 28 to May 27, 2008, the claimant worked when she was able but only was working about 15 to 20 hours per week. On May 1, 2008, the claimant received a medical statement from Jennisch certifying that the claimant would continue to have appointments with him for the next 90 days and would need to miss work. She submitted the statement along with a request for an additional 90 days of unpaid leave on May 14, 2008.

On May 20, 2008, Lathrop denied the claimant's request for the extension of her leave beyond May 27, 2008. Lathrop informed the claimant that she would be removed from the payroll unless she notified Lathrop prior to May 28, 2008, that she was returning to work and provide a release from her doctor stating she was able to perform the essential functions of her job. On May 21, the claimant approached Lathrop and asked her what the letter meant. Lathrop told her that she needed to provide a letter from her doctor guaranteeing that she was able to work 40 hours per week. The claimant protested that she could not do that since she had just provided a doctor's statement that she would be required to miss some days. Lathrop insisted that she needed this letter by May 27. The claimant then contact Jennisch who stated that he was not willing to write the letter because he had stated in his May 1 letter that the claimant would need time off.

The claimant worked on May 27. Lathrop called her into her office and asked whether she could be supplying the letter from her doctor. When the claimant replied that she could not supply the letter requested and her doctor would not provide her with the letter, Lathrop informed her that May 27 was her last day and not to return to work.

Lathrop discharged the claimant on May 27, 2008, because the claimant could not supply a letter guaranteeing she was able to work 40 hours per week.

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

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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 substantial and 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).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case. The claimant was discharged for a failure to perform her job due to her inability to work 40 hours per week.

This fact of this case raises an issue as to whether the claimant is able to and available for work as required by the unemployment insurance law in Iowa Code § 96.4-3. I cannot decide this

issue because it was not listed as an issue on the hearing notice. The issue is therefore remanded to the Agency to investigate and make a determination.

**DECISION:**

The unemployment insurance decision dated June 30, 2008, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits based on the reasons for her separation from work. The issue of whether the claimant is able to and available for work is remanded to the Agency to investigate and make a determination.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/css