

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SANDRA E HUTT
Claimant

APPEAL NO: 13A-UI-04400-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 03/17/13
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's April 4, 2013 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because she had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Brian Hutt was available to testify on the claimant's behalf, but did not. Bruce Burgess represented the employer. Steve Graham, the human resource manager until October 1, 2012, when he became the manager of general merchandise, 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 is qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on July 21, 2012. She worked as a part-time bakery clerk. The claimant's last day of work was August 28, 2012.

The claimant had medical issues with her back and saw a physician on August 29, 2012. The claimant gave the employer an August 29, 2012, doctor's statement that asked the employer to excuse the claimant from work until further notice. The claimant gave this work restriction to Graham. After the claimant had another medical appointment on September 7, she gave Graham another work restriction. The September 7 restriction indicated the claimant was still unable to return to work.

Graham suggested the claimant complete paperwork for a leave of absence. The employer mailed the paperwork to the claimant. The claimant asked her physician to complete the paperwork, but her doctor was not comfortable completing the form until the claimant had an

MRI. The claimant contacted the employer and asked if it would all right to return the leave of absence paperwork in early November because her doctor wanted her to have an MRI before signing the leave of absence forms. The claimant understood the paperwork could be submitted in November.

After Graham took over a new position, a new human resource director took over as the human resource manager. On November 5, the claimant gave her doctor's office the paperwork that needed to be signed by the doctor. The claimant assumed the doctor's office signed and forwarded the completed paperwork to the employer. The claimant talked to someone working for the employer about once a month. No one told her the employer ended her employment on December 17, 2012, or had not received the paperwork for a leave of absence. The claimant assumed her doctor had sent the employer the signed forms. Right before the holidays, the claimant talked to the bakery manager. The manager wanted to know if the claimant could work. The claimant responded by saying she wanted to work but still could not work.

The claimant's doctor did not release her to work until March 7, 2013, for five hours a day for two weeks. As of March 19, the claimant could work a normal workload without any restrictions. The claimant did not establish a claim for benefit until the week of March 17, 2013.

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 evidence does not establish that the claimant voluntarily quit her employment. Instead, the employer submitted paperwork on December 17, 2012 to end the claimant's employment.

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).

This case demonstrates the problems that occur when there is a communication breakdown. After Graham accepted a new position, the new human resource manager did not follow up to let the claimant know the employer did not receive the completed leave of absence paperwork

from her physician. The record also indicates the employer did not send the claimant a letter indicating she had until a certain date to submit this paperwork. Instead of making sure the employer received the completed paperwork, the claimant assumed her physician forwarded the document to the employer and this did not occur.

Based on a lack of communication and follow-up, the employer established business reasons for terminating the claimant's employment on December 17, 2012. The evidence does not establish that the claimant committed work-connected misconduct. She was still restricted from working and could not work even though she wanted to. The claimant is qualified to receive benefits as of March 17, 2013.

DECISION:

The representative's April 4, 2013 determination (reference 01) is affirmed. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit work-connected misconduct. As of March 17, 2013, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs