

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARTHA STRAUBE**  
Claimant

**APPEAL NO: 12A-UI-02134-B**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CERRO GORDO COUNTY**  
Employer

**OC: 01/15/12**  
**Claimant: Respondent (4/R)**

Iowa Code § 96.5-2-a - Discharge for Misconduct  
Iowa Code § 96.4-3 – Able and Available for Work

**STATEMENT OF THE CASE:**

Cerro Gordo County (employer) appealed an unemployment insurance decision dated February 23, 2012, reference 01, which held that Martha Straube (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Mason City, Iowa, on May 16, 2012. The claimant participated in the hearing. The employer participated through Tom Drzycimski, administrative officer for personnel; Lisa Losen, home care aide manager; Brian Hanft, deputy director of public health; and Ron Osterholm, health director. Employer's Exhibits 1 through 12 and Claimant's Exhibits A and B were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant's separation from employment qualifies her to receive unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on August 25, 2003 and was a full-time home care aide when she was taken off work by her physician on August 25, 2011 due to a non-work-related medical condition. She applied for and was approved for leave under the Family Medical Leave Act (FMLA). The claimant's FMLA went from August 24, 2011 through November 14, 2011. Prior to the time her FMLA was exhausted, she requested and was granted an additional eight weeks of unpaid leave following her surgery, which was scheduled for November 14, 2011.

Pursuant to the union contract and with the approval of the Board of Health, the Health Director may grant an unpaid leave of absence to an employee for personal reasons provided it does not exceed 12 work days within a "rolling" 12-month period. Upon consultation with the Health Director, the Board of Health retains the right to grant unpaid leave beyond the amounts

specified in the article if it is in the best interests of the employer. The employee must make the request in writing to the Health Director at least ten days prior to the expiration of an approved leave. If an employee incurs unpaid leave beyond the amounts specified in the contract, the employee's employment shall be terminated.

The claimant's extension of her unpaid leave was exhausted on January 10, 2012. She provided a doctor's certificate of return to work slip dated January 4, 2012 which stated that she was unable to return to work until further notice and her next appointment was in three weeks. On January 6, 2012, the claimant submitted a request for an extension of her unpaid leave. Pursuant to the union contract, Health Director Ronald Osterholm denied that request and terminated her employment in a letter dated January 10, 2012. Mr. Osterholm advised the claimant to file a grievance if she felt aggrieved by his decision. The claimant did not grieve her termination.

After the claimant separated from employment, her physician provided a letter dated March 12, 2012 stating that she had been released to return to full, unrestricted duties on January 26, 2012. The letter also stated that the claimant could have tolerated partial shifts and duties starting January 4, 2012; but, since she told him that her employer required a full release before she could return to work, she was "kept off work until she could tolerate 8 hours of weightbearing (sic) activity in regular shoes."

The employer issued a check to the claimant on January 20, 2012 for 39.640 hours of vacation pay for a total amount of \$505.01. She filed her weekly claim for unemployment insurance benefits for the week ending January 21, 2012 but did not report any earnings for that week.

The claimant filed a claim for unemployment insurance benefits effective January 15, 2012 and has received benefits after the separation from employment.

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

The issue in this case is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. All terminations of employment are generally classified as layoffs, quits, discharges, or other separations. 871 IAC 24.1(113)(a). 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 has discharged the claimant for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

The evidence establishes the claimant was unable to work due to a non-work-related medical condition. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period. 871 IAC 24.22(2)(j). If at the end of a period of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits. 871 IAC 24.22(2)(j)(1). On the other hand, if the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed, the individual is considered as having voluntarily quit and therefore is ineligible for benefits. 871 IAC 24.22(j)(2).

In the case herein, the claimant was not medically able to return to work at the end of her leave of absence, so she requested to extend her leave. Rule 871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee

has separated. The claimant was consistent in expressing her wish to return to work with the employer. In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant did not exhibit the intent to quit and did not act to carry it out. Since the claimant did not have the requisite intent necessary to sever the employment relationship so as to treat the separation as a "voluntary quit" for unemployment insurance purposes, it must be treated as a discharge.

The employer has the burden to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged because she was unable to work due to non-work-related medical reasons. Her separation from employment was not due to any misconduct on her part nor did she quit her job. The claimant is qualified to receive unemployment insurance benefits as of January 29, 2012, provided she is otherwise eligible.

One final issue that must be addressed in this case is whether the claimant was able and available to work. In order for an individual to be eligible to receive unemployment insurance benefits, the evidence in the record must establish that she is able to work, available for work, and earnestly and actively seeking work. See Iowa Code § 96.4(3) and 871 IAC 24.22. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. See 871 IAC 24.22(1)(a). The claimant's physician provided a work release certificate on January 4, 2012 stating that she was unable to return to work until further notice. Regardless of her physician's letter after the fact, he indicated she was not medically able to work on January 4, 2012. The physician does state that he released her as of January 26, 2012. Therefore, the claimant does not meet the availability requirements of the two-week period ending January 28, 2012 and benefits are denied for that same time frame.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

This matter is remanded to the Investigations and Recovery Unit to determine if the claimant received wages that she failed to report.

**DECISION:**

The unemployment insurance decision dated February 23, 2012, reference 01, is modified in favor of the appellant. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible. The matter is remanded for an investigation and determination of unreported wages, as well as the overpayment issue.

---

Susan D. Ackerman  
Administrative Law Judge

---

Decision Dated and Mailed

sda/kjw