

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

DORCAS M IKOMBA
Claimant

APPEAL NO. 18R-UI-10360-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 08/12/18
Claimant: Appellant (4)

Section 96.5-2-a – Discharge for Misconduct
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Dorcias Ikomba (claimant) appealed a representative's August 30, 2018, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Tyson Fresh Meats (employer). Administrative Law Judge Elder issued a decision on September 25, 2018, affirming the representative's decision. A decision of remand was issued by the Employment Appeal Board on October 15, 2018. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 31, 2018. The claimant participated personally through Moussa Sarr, Interpreter. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason and whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on January 10, 2017, as a full-time production laborer. In March 2018, the claimant injured her right wrist at work. She reported the injury to the employer. On July 19, 2018, the employer sent the claimant to a doctor. He diagnosed her with a cyst on her right wrist. The claimant understood the doctor to say she was to return and perform light duty work. She could not read English and this is not what the doctor wrote. The employer returned her to full duty work. The claimant was supposed to return to the employer's physician on August 30, 2018.

The claimant performed her regular work but was in pain. The employer did not return her to the doctor. On August 13 and 14, 2018, the claimant was crying at work. On August 14, 2018, employer told the claimant she was terminated because she could not work.

The claimant returned to the employer's physician on August 30, 2018. The physician restricted her from working. She was not to use her right arm/hand and was to wear a right thumb splint. On October 19, 2018, she saw the doctor again. A radio scan showed that the cyst was preventing two fingers from their normal range of movement. The doctor's note said the claimant was allowed to return to work with restrictions. She could work so long as she did not use her right arm/hand and wore a right wrist wrap at all times.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(1)d provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Where an employee did not voluntarily quit but was terminated while absent under medical care, the employee is allowed benefits and is not required to return to the employer and offer services pursuant to the subsection d exception of Iowa Code section 96.5(1). *Prairie Ridge Addiction Treatment Services v. Jackson and Employment Appeal Board*, 810 N.W.2d 532 (Iowa Ct. App. 2012). The claimant was under the care of the employer's physician and working while in pain. The employer terminated her rather than sending her to the doctor again for her work related injury. Being in pain from a work related injury is not misconduct. The employer did not participate in the hearing and, therefore, provided no evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

The next issue is whether the claimant was able and available for work. For the following reasons the administrative law judge concludes she was not from September 2, 2018, through October 7, 2018.

Iowa Admin. Code r. 871-24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

When an employee is medically unable to perform work, she is considered to be unavailable for work. The claimant was restricted from working by her physician from August 30 to October 7, 2018. She is considered to be unavailable for work September 2 to October 7, 2018. The claimant is disqualified from receiving unemployment insurance benefits from September 2 to October 7, 2018, due to her unavailability for work. She is considered to be available for work as of October 8, 2018, because her physician stated she was able to work.

DECISION:

The representative's August 30, 2018, decision (reference 01) is modified in favor of the appellant. The employer has not met its burden of proof to establish job related misconduct. The claimant is considered to be able and available for work as of October 8, 2018, because her physician stated she was able to work. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs