



STATE OF OHIO
UNEMPLOYMENT COMPENSATION
REVIEW COMMISSION
145 SOUTH FRONT STREET P.O. BOX 182299
COLUMBUS, OHIO 43218-2299

RO1-17046-0000
UI INTRASTATE

DECISION

In re claim of: APPELLANT

Claimant Representative:
VICTORIA J PIKE
SOUTHEASTERN OHIO LEGAL SERVICES
700 NAT'L CITY BANK BLDG
800 GALLIA ST
PORTSMOUTH, OH 45662

Social Security No.. [REDACTED]
L.O. 635-0

Employer:
[REDACTED]

Employer Representative:
[REDACTED]

UC0 No. -0012767000-

Employer:
[REDACTED]

UC0 No. -0012767000-

CASE HISTORY

Claimant filed an application for determination of benefit rights on July 2, 2001, with a benefit year beginning July 1, 2001.

She filed an additional claim for the week ending October 13, 2001.

On November 1, 2001, the Director issued a determination of benefits which held claimant was discharged by Mitchellace for just cause in connection with work; suspended benefits until claimant worked in six weeks of covered employment; earned wages equal to \$1,014.00 or more and was otherwise eligible; and disallowed the additional claim for the week ending October 13, 2001.

On November 9, 2001, claimant filed a timely appeal to the determination of benefits.

On November 23, 2001, the Director issued a redetermination which affirmed the determination of benefits.



On December 6, 2001, claimant filed a timely appeal to the redetermination with the Director.

On December 10, 2001, the Director transferred jurisdiction to the Review Commission.

On January 8, 2002, a hearing was held before Hearing Officer Allen R. Musheno in Portsmouth, Ohio. Claimant appeared in person and was represented by Victoria Pike, Attorney, of Southeastern Ohio Legal Services. Mitchellace was represented by Kelly Tackett of Sheakley/Uniservice, Inc., with Beth Haney, Human Resource Manager, as a witness.

FINDINGS OF FACT

Claimant was employed with Mitchellace from September 10, 2001 to October 4, 2001 as a spooler operator. She was paid \$5.57 an hour.

Claimant was a probationary employee. During her probationary period, she was allowed to have eight points under the attendance policy. The probationary period lasted for 1040 hours. When claimant was hired, she was given a copy of the employee handbook.

Claimant last worked on September 25, 2001. She called in sick beginning September 26, 2001. Claimant was under the care of a doctor and unable to work beginning September 26, 2001 through October 4, 2001. Claimant was under the care of her family doctor, Robert E. Newman, M.D., and D. Blaine Nease, M.D.

Claimant was suffering from a serious medical condition which resulted in her having surgery. Claimant provided her employer with statements from her physicians to excuse her absence from work. Claimant was given one point for her absenteeism on and after September 26, 2001, under the attendance policy of Mitchellace.

On October 4, 2001, claimant's husband contacted Mitchellace to notify them that she would not be returning to work in the foreseeable future because of her medical condition. Claimant was aware at that time that she was going to undergo surgery and would not be able to return to work until on or about November 5, 2001.

Claimant was advised to come to work if she could and bring in any company property. Claimant did go to her employer's place of business and was notified that she was being discharged because as a probationary status employee she was not fulfilling attendance requirements. Claimant was discharged effective on October 4, 2001, for not fulfilling attendance requirements.



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During the week ending October 13, 2001, claimant was under the care of her physician for a serious medical condition. Claimant was not physically able to work during the week ending October 13, 2001.

ISSUE 1

Was claimant discharged by Mitchellace without just cause in connection with work?

LAW

An individual is not disqualified for benefits if the individual was discharged without just cause in connection with work. Section 4141.29 (D) (2) (a) O.R.C.

REASONING

Claimant's absence from work after September 25, 2001, was due to a bona fide medical condition verified by the statement of a treating physician. Claimant made her employer aware of her medical condition but was unable to return to work because of her medical condition.

Claimant's discharge does not constitute fault. Absenteeism caused by a bona fide illness which is reported to an employer does not constitute just cause for discharge, *Schultz v. Herman's Furniture, Inc.* (1976), 52 Ohio App.2d 161.

Claimant was discharged by Mitchellace without just cause in connection with work.

ISSUE 2

Was claimant able to work during the week ending October 13, 2001?

LAW

An individual is not eligible for benefits for any week unless the individual has met the following conditions:

Able to work and available for and actively seeking suitable work. 4141.29 (A) (4) O.R.C.



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REASONING

During the week ending October 13, 2001, claimant was under the care of her doctor and admits that she was not able to work. The additional claim for the week ending October 13, 2001, is disallowed.

DECISION

The Director's redetermination mailed November 23, 2001, is hereby modified. Claimant was discharged by Mitchellace without just cause in connection with work. The disqualification for benefits previously imposed is hereby removed.

The additional claim for the week ending October 13, 2001, is disallowed because claimant was not able to work.

Allen R. Musheno, Hearing Officer

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APPEAL RIGHTS

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This decision is mailed on January 9, 2002.

A Request for Review before the U.C. Review Commission may be filed by any interested party within twenty-one calendar days after this decision is mailed. Said twenty-one day period is calculated to end on January 30, 2002.

The Request for Review must be in writing and signed by the appealing party or an authorized representative. The request should set forth the reasons why the appellant disagrees with the Hearing Officer's decision. You may file your request in person at any Ohio Department of Job and Family Services office, mail your request to the U.C. Review Commission, 145 South Front Street, P-0. Box 182299, Columbus, Ohio 43218-2299, or fax your request to (614) 752-8862.