

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TEMPESTT L MC CLELLAN
Claimant

APPEAL NO: 11A-UI-09813-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 06/12/11
Claimant: Appellant (4)

Iowa Code § 96.5(2)a – Discharge
Iowa Code § 96.4(3) – Ability to and Availability for Work

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's July 20, 2011 determination (reference 03) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. On August 12, the employer's representative informed the Appeals Section that the employer elected not to participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge concludes the claimant is qualified to receive benefits based on the reasons for her employment separation, but she is not eligible to receive benefits because she is only willing to work part time while she goes to college.

ISSUES:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

Is the claimant able to and available for work as of June 12, 2011?

FINDINGS OF FACT:

The claimant started working for the employer in November 2010. She worked as a full-time CNA. During her employment, the claimant received a work-related injury. The work-related injury resulted in the claimant having surgery in April 2011. The worker's compensation physician released the claimant to return to work in late April with a restriction that she was to work sitting down. In late May 2011, the claimant asked that her job be changed from full time to part time because she was going to school and she only wanted to work weekends. (The claimant has not received Department Approved Training.)

The last day the claimant actually worked for the employer was June 3, but she was scheduled to weekends after June 3. The employer gave the claimant warnings for on-going attendance issues on June 10 and/or 12. The claimant understood that if she missed anymore work, she could be discharged. After receiving the June 10 warning, the claimant went to her personal physician. The claimant's personal physician restricted her from doing any work until the first week of July. The claimant gave the employer the work restriction from her personal physician.

The claimant was scheduled to work the weekend of June 17-19, but did not because of her personal physician's work restriction. When the claimant did not report to work as scheduled for these weekend shifts, the employer discharged her for violating the employer's attendance policy.

The claimant did not file an unemployment claim in June. She reopened her claim the week of July 26 and started filing claims in July.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7). The employer had justifiable business reasons for discharging the claimant when she failed to work as scheduled. While her personal physician restricted her from working until the first week of July, the employer's worker's compensation physician had released her to work in early June by having her work one hour of her eight-hour shift standing up and each week increasing the amount of time she worked standing up each week. The employer knew the claimant's physician restricted her from working until the first week of July. Since the claimant gave the employer her physician's work restriction, the fact she was absent because she had a work restriction does not establish that the claimant committed work-connected misconduct. As of June 12, 2011, the claimant is qualified to receive benefits.

Each week a claimant files a claim for benefits she must be able to and available for work. Iowa Code § 96.4(3). The facts establish the claimant is only willing to work part-time hours because she is going to school. Even though the claimant is commended for going to school, the law presumes a claimant is not able to or available for work while attending school. (871 IAC 24.23(5)). The claimant admitted she only wants to work part time, even though she had been working full time for the employer, while she attends school. As of July 3, the claimant is not eligible to receive benefits because she has restricted the number of hours she is willing to work while she attends school. Until the claimant establishes she is willing to work full-time hours, as she had been working or receives Department Approved Training, she is not eligible to receive benefits.

DECISION:

The representative's July 20, 2011 determination (reference 03) is modified in the claimant's favor. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. Based on the reasons for her employment separation, the claimant is qualified to receive benefits as of June 12, 2011, provided she meets all other eligibility requirements. The employer's account is subject to charge. The claimant is not eligible to receive benefits until July 3, 2011, because she was restricted from working until early

July. Since the claimant is only willing to work part time because she is going to school and had been working full time, she is not eligible to receive benefits even after her doctor released her to work because she has restricted her availability for work while she attends school. The claimant shall remain ineligible until she reopens her claim and establishes her eligibility to receive benefits which may include applying for and receiving Department Approved Training.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs