

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TINA M FELSKE**

Claimant

**APPEAL NO. 13A-UI-13573-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GENESIS HEALTH SYTEM**

Employer

**OC: 11/10/13**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed an appeal from a representative's decision dated December 3, 2013, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on January 6, 2014. The claimant participated personally. The employer participated by Beau Dexter, Human Resources Director. The record consists of the testimony of Beau Dexter; the testimony of Tina Felske; and Employer's Exhibits 1-11.

**ISSUE:**

Whether the claimant was discharged for misconduct..

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a health care provider. The claimant worked as an aide in the environmental services department. She was a full-time employee. Her date of hired was November 19, 2007. The claimant's last day of actual work was September 14, 2012. She was terminated on April 19, 2013.

The claimant sustained a work-related injury on September 14, 2013. She injured her left shoulder. The claimant was taken off work by her physician and she began receiving worker's compensation benefits. The employer has a policy that provides an individual who is injured on the job with 12 weeks of Family Medical Leave Act (FMLA) plus an additional 12 weeks beyond that FMLA leave. The claimant was unable to return to work after the 24 weeks had expired. She was terminated by her employer. The claimant was released to return to work on or about November 3, 2013. She is 43 years old and has a high school education. She has been applying for positions as dietary aide; housekeeper; and "office jobs." The claimant's work history includes owning her own business. She packed boxes for people who were moving.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The claimant is eligible for unemployment insurance benefits. Issues surrounding separations of employment for medical reasons and subsequent entitlement to unemployment insurance benefits are among the most challenging in unemployment insurance law. The evidence in this case showed that the claimant was unable to return to work due a shoulder condition and had been placed on a leave of absence by the employer. When the claimant's leave of absence expired, she was still unable to return to work and was terminated by the employer. This termination is not misconduct and there is no evidence that the claimant quit her job. Rather this is a non-disqualifying separation and the claimant is eligible for benefits provided she meets all other eligibility requirements, including being able and available for work.

**DECISION:**

The decision of the representative dated December 3, 2013, reference 01, is affirmed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/css