

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KELLY A MCINTYRE**  
Claimant

**APPEAL NO. 14A-UI-11639-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ACCESSIBLE MEDICAL STAFFING**  
Employer

**OC: 10/19/14  
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

Accessible Medical Staffing filed a timely appeal from a representative's decision dated November 5, 2014 (reference 01) which held claimant eligible to receive unemployment insurance benefits, finding that the claimant was dismissed from work under non-disqualifying conditions. After due notice was provided, a telephone hearing was held on December 2, 2014. Claimant participated. The employer participated by Ms. Mindy Butler, Administrator.

**ISSUE:**

At issue is whether the claimant was dismissed from employment for any misconduct that would disqualify her from receiving unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Kelly McIntyre was employed by Accessible Medical Staffing from May 2010 until October 15, 2014 when she was dismissed from any future assignments because the claimant no longer had the medical abilities to perform those work assignments. Ms. McIntyre was employed as a part-time certified nursing assistant and was paid by the hour. The claimant was primarily assigned to work at the Burlington Care Center.

Ms. McIntyre's last day of work was May 29, 2014. At that time the claimant suffered a work-related injury and was subsequently hospitalized and underwent three surgeries. Ms. McIntyre was maintained on the company's employment rolls until October 15, 2014 when a final determination was made on the claimant's workman's compensation claim and permanent restrictions were imposed by her physician.

Because the claimant had been permanently restricted from bending, turning, and squatting, and was limited to a 70-pound lifting limitation; the employer reasonably concluded that Ms. McIntyre no longer had the physical ability to perform her duties as a certified nursing assistant. The claimant was informed on October 15, 2014 that she was being separated from her employment solely because she no longer had the ability to perform the duties that were part of the job.

**REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes that Ms. McIntyre was dismissed from work for intentional conduct that would disqualify her from the receipt of benefits. It does not.

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In this matter, the evidence is clear that Ms. McIntyre was dismissed from her employment with Accessible Medical Staffing on October 15, 2014 for the sole reason that she no longer had the physical ability to perform the duties that were part of her job as a certified nursing assistant. The claimant had suffered a work-related injury and had permanent medical restrictions that prevented her from performing a number of the duties that were essential to the job of certified nursing assistant.

Because the claimant's inability to perform to prior level of competence was not intentional, but due to factors beyond her control, the claimant is not subject to a benefit disqualification on this job separation. The claimant was dismissed because the employer could no longer use her services due to medical inability, which the claimant had no control over. The claimant's separation from employment thus took place under non-disqualifying conditions. The claimant is potentially eligible to receive unemployment insurance benefits, providing that she meets all other eligibility requirements of Iowa law. (It appears that the claimant has been held ineligible to receive unemployment insurance benefits because she is not able to work.)

**DECISION:**

The representative's decision dated November 5, 2014 (reference 01) is affirmed. The claimant was dismissed for no disqualifying reason and is eligible to receive unemployment insurance benefits, providing she meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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