

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

Appeal Number: 04A-UI-01600-S2T
OC: 01/04/04 R: 01
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

MARIA D DEL ANGEL
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STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

EMPLOYMENT CONNECTIONS INC
PO BOX 324
SPENCER IA 51301-0324

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1(d) – Separation Due to Illness/Injury/Pregnancy
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Maria Del Angel (claimant) appealed a representative's February 4, 2004 decision (reference 01) that concluded she was not able to work with Employment Connections (employer) due to her pregnancy. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 5, 2004. The claimant participated personally. The employer participated by Jim Ketterman, Owner, and Deb Tornow, Human Resources Assistant. The employer offered two exhibits which were marked for identification as Exhibits One and Two. Exhibits One and Two were received into evidence.

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 June 6, 2002, as a full-time temporary labor. On January 6, 2004, the claimant had a doctor's appointment regarding her pregnancy. The claimant was advised that she was not to lift more than 30 pounds, work more than 8 hours per day and be allowed to go to the bathroom as needed.

It is the employer's policy not to provide light-duty work for employees under restriction unless the restrictions are due to a work-related injury or illness. The employer ended the claimant's employment on January 7, 2004, by placing her on a leave of absence even though the claimant desired to continue working.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes she was not.

Iowa Code Section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant was separated from employment because she could no longer meet the requirements of her job description because of a lifting restriction due to her pregnancy. An individual subject to weight restriction did not voluntarily quit when the employer terminated the relationship pursuant to its policy of not allowing light-duty work. Wills v. Employment Appeal Board, 447 N.W.2d 137 (Iowa 1989). The claimant's separation was not voluntary. The employer discharged the claimant. The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer discharged the claimant when it placed the claimant on a leave of absence and has the burden of proof to show misconduct. The employer did not provide any evidence of misconduct at the hearing. Consequently, the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

The second issue is whether the claimant is able to work. For the following reasons the administrative law judge concludes she is.

Iowa Code Section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

The claimant is restricted from lifting over 30 pounds, working 8-hour days, and going to the bathroom as needed. The claimant can perform work in a number of positions with these restrictions. The claimant has met her burden of proof to show that she has the ability to work. If at any time the claimant's restrictions change, she must notify Workforce Development of her change in restrictions.

DECISION:

The representative's February 4, 2004 decision (reference 01) is reversed. The claimant was separated from employment for no disqualifying reasons. Benefits are allowed, provided she is otherwise eligible. If at any time the claimant's restrictions change, she must notify Workforce Development of her change in restrictions.

bas/b