

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WENDY M WHITE**  
Claimant

**APPEAL NO. 11A-UI-15657-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**APPLEBEES NEIGHBORHOOD GRILL  
& BAR**  
Employer

**OC: 10/02/11  
Claimant: Respondent (5-R)**

Section 96.5(2)(a) – Discharge

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the November 28, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on January 9, 2012. Claimant participated. Paul Stroud represented the employer.

**ISSUE:**

Whether the claimant separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Wendy White was employed by Applebees Neighborhood Grill & Bar from January 2011 and last performed work for the employer on August 24, 2011. Ms. White started the employment as a part-time hostess, working 25 to 32 hours per week. In May 2011, Ms. White became the full-time dishwasher, working 5:00 p.m. to 1:00 or 2:00 a.m. Ms. White's immediate supervisor was the kitchen manager. Paul Stroud was general manager of the restaurant.

In August 2011, Ms. White began to experience pain in her right wrist when she performed the dishwashing duties. Ms. White reported this to the kitchen manager, who joked that she should not punch any more walls. The pain in Ms. White's wrist continued and she ultimately went to the emergency room. On August 25, Ms. White notified Dean Denning, associate manager, that she had gone to the emergency room and that she was not able to work for the remainder of the week based on the situation with her wrist. On August 27, Ms. White provided the employer with a doctor note excusing her absence. Ms. White advised Mr. Stroud that the doctor did not want her to wash dishes any more. Mr. Stroud prepared and submitted a workers' compensation first report of injury and contacted the employer's workers' compensation provider. Mr. Stroud wanted Ms. White to take a copy of the hostess job application to her doctor to see whether she could perform those duties. When Ms. Stroud tried to see a doctor, the doctor twice turned her away because of the pending workers' compensation matter and the fact that neither the employer nor its insurance carrier had authorized payment.

Ms. Stroud was subsequently evaluated by a workers' compensation doctor, diagnosed with carpal tunnel syndrome in her right wrist, and placed in a brace that runs the length of her hand to her elbow. The brace is non-waterproof. Ms. White is unable to perform the dishwashing duties.

Once the employer began to treat the matter as a workers' compensation claim, communication between Ms. White, the employer, and the workers' compensation carrier became scrambled. Ms. White would contact the employer to complain about delays in the handling of her injury. The employer was unaware of what communication had taken place involving the insurance carrier and Ms. White. Ms. White understood the employer's position to be that she could not return to the employment unless she could perform her dishwashing duties. At the time of the November 18, 2011 fact-finding interview, the Workforce Development representative put this question to the employer and understood the employer to say that Ms. White could not come back unless she could perform her dishwashing duties. While the employer asserts that the employer did not have a valid contact number for Ms. White, Ms. White had indeed provided an updated number. At the time of the appeal hearing, Ms. Stroud continued under care of the workers' compensation doctor.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Workforce Development rule 871 IAC 24.1(113) provides as follows:

24.1(113) Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In considering an understanding or belief formed, or a conclusion drawn, by an employer or claimant, the administrative law judge considers what a reasonable person would have concluded under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993).

The weight of the evidence in the record establishes that the employer declined to make further work available to Ms. White once her wrist pain gave rise to a workers' compensation claim and she was no longer able to perform her dishwashing duties. Given the fact that Ms. White has been off work since August 2011, the administrative law judge concludes that the employer

discharged Ms. White from the employment. Because the separation was not based on a voluntary quit or misconduct on the part of Ms. White, the separation does not disqualify her for unemployment insurance benefits. Ms. White is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

The evidence raises the question of whether Ms. White has been able and available for work since she established her claim for benefits. This matter will be remanded to the Claims Division for determination of that issue.

**DECISION:**

The Agency representative's November 28, 2011, reference 01, decision is modified as follows. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

This matter is remanded to the Claims Division for determination of whether the claimant has been able to work and available for work since she established her claim for benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw