

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAELENE DELORENZO-NEEDHAM
Claimant

APPEAL NO. 11A-UI-09796-A

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRANDVIEW HEIGHTS INC
Employer

**OC: 07/03/11
Claimant: Appellant (2-R)**

Section 96.5-2-a – Discharge
871 IAC 24.32(8) – Current Act of Misconduct

STATEMENT OF THE CASE:

Raelene DeLorenzo-Needham filed a timely appeal from an unemployment insurance decision dated July 21, 2011, reference 01, that disqualified her for benefits upon a finding that she had voluntarily left employment with Grandview Heights, Inc. After due notice was issued, a hearing was held in Des Moines, Iowa, on August 31, 2011. Tara Hall, attorney at law, appeared on behalf of the employer. Former Director of Nursing Mary Haggard testified. Exhibits One through Five were admitted into evidence. The claimant did not respond when paged at the time of the hearing.

ISSUES:

Was the separation a quit or a discharge?

Was the separation a disqualifying event?

FINDINGS OF FACT:

Raelene DeLorenzo-Needham was employed as a certified nursing assistant by Grandview Heights, Inc. from December 1, 2010, until she was discharged May 31, 2011. As a certified nursing assistant, Ms. DeLorenzo-Needham was required to lift at least 50 pounds. She was discharged on May 31, 2011, after she provided medical documentation that she could not lift that heavy of weight due to pregnancy.

REASONING AND CONCLUSIONS OF LAW:

The first question concerns the characterization of the separation. Although the fact-finding decision indicated it was a voluntary quit, there is absolutely no evidence in the record that the claimant intended to sever the employment relationship or carried out any overt act in furtherance of such an intention. The separation was initiated by the employer. It is better characterized as a discharge.

The remaining question is whether the evidence establishes that the claimant was discharged for misconduct in connection with her employment. It does 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.

The employer has the burden of proof. See Iowa Code section 96.6-2. Among the elements it must prove is that the final incident leading directly to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). The final incident leading to discharge was the claimant's notification to the employer that she could not lift 50 pounds as required in her job description. While this presented the employer with sufficient grounds to discharge, it does not establish misconduct. No disqualification may be imposed.

Evidence in this record raises the question of whether the claimant meets the eligibility requirement of being medically able to work. This issue is remanded to the Unemployment Insurance Services Division.

DECISION:

The unemployment insurance decision dated July 21, 2011, reference 01, is reversed. The separation was not a disqualifying event. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible. The question of her eligibility for benefits under Iowa Code section 96.4-3 is remanded.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw