

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KEISHA N DEDRICK**  
Claimant

**APPEAL NO: 13A-UI-01479-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE CBE GROUP INC**  
Employer

**OC: 12/30/12  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge  
Section 96.4-3 – Able and Available  
871 IAC 24.22(2)j – Leave of Absence

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated January 23, 2013, reference 01 ,that held she voluntarily quit without good cause due to a non-work related injury or illness on December 20, 2012, and benefits are denied. A telephone hearing was held on March 7, 2013. The claimant participated. The employer submitted Exhibit 1 stating it would not participate.

**ISSUES:**

Whether the claimant was discharged for misconduct in connection with employment.

Whether claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The claimant began employment on October 4, 2004, and last worked for the employer as a full-time collections employee on September 14, 2012. Claimant was granted FMLA due to a neurological health issue later diagnosed as vertigo. When she exhausted this leave entitlement, the employer put her on an extended leave.

On December 3, the employer notified claimant it could not extend her leave beyond December 20 and she needed to return to work or would be terminated. Claimant was not released by her doctor to return and her employment ended December 20.

Claimant's health issue caused her problems sitting and working with a computer all day. Although her doctor restricted her from this type of work, claimant has been applying for C.N.A. and pharmacy technician positions where she has past experience and employers are willing to hire with training reimbursement.

**REASONING AND CONCLUSIONS OF LAW:**

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 24.22(2)j(1)(2)(3) provides:

Benefit 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.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

The administrative law judge concludes the employer has failed to establish claimant was discharged for misconduct in connection with employment on December 20, 2012. The employer failed to participate in this hearing and offer evidence of job disqualifying misconduct.

An employee on medical leave who is unable to return to work due to a doctor imposed health restriction and is terminated for this reason has not committed an act of misconduct.

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".

The administrative law judge further concludes claimant is able and available for work and is allowed UI benefits effective December 30, 2012.

Although claimant is restricted from her former employment, she is able to work some gainful employment for which she has experience and is willing to train.

**DECISION:**

The department decision dated January 29, 2013, reference 01, is reversed. The claimant was not discharged for misconduct on December 20, 2012. Claimant is able and available for work. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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