IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

RENEE K YEISLEY
Claimant

DISCOVERY LIVING INC
Employer

APPEAL NO. 12A-UI-11133-LT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 08/12/12
Claimant: APPELLANT (4)

Iowa Code § 96.5(2)a – Discharge/Misconduct
Iowa Code § 96.5(1)d – Voluntary Leaving/Illness or Injury
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 10, 2012 (reference 02) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on October 9, 2012. Claimant participated. Employer opted not to participate. Claimant's Exhibit A was received.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?
Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed both part and full-time as a community living assistant and was separated from employment on August 7, 2012. She was discharged during a period of extended personal medical leave. (Claimant's Exhibit A) She is available for part-time work or full-time work with schedule accommodation effective September 4, 2012.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not quit but was discharged for no disqualifying reason.

Ref. 6, 187

Disqualification from benefits pursuant to Iowa Code section 96.5(1) requires a finding that the quit was voluntary. *Geiken v. Lutheran Home for the Aged Ass'n*, 468 N.W.2d 223, 226 (Iowa 1991). An absence is not voluntary if returning to work would jeopardize the employee's health. A physician's work restriction is evidence an employee is not medically able to work. *Wilson Trailer Co. v. Iowa Emp't. Sec. Comm'n*, 168 N.W.2d 771, 775-6 (Iowa 1969). Where an employee did not voluntarily quit but was terminated while absent under medical care, the employee is allowed benefits and is not required to return to the employer and offer services pursuant to the subsection d exception of Iowa Code section 96.5(1). *Prairie Ridge Addiction Treatment Svcs. v. Jackson and Emp't Appeal Bd.*, ___ N.W.2d ___, No. 11-0784 (Iowa Ct. App. Jan. 19, 2012). The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that:

> "Insofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).
>
> The statute provides an exception where:
>
> The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and … the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible. Iowa Code § 96.5(1)(d).
>
> Section 96.5(1)(d) specifically requires that the employee has recovered from the illness or injury, and this recovery has been certified by a physician. The exception in section 96.5(1)(d) only applies when an employee is fully recovered and the employer has not held open the employee's position. *White*, 487 N.W.2d at 346; *Hedges v. Iowa Dep't of Job Serv.*, 368 N.W.2d 862, 867 (Iowa Ct. App. 1985); see also *Geiken, supra* (noting the full recovery standard of section 96.5(1)(d)).

The claimant is not required to return to the employer to offer services after the medical recovery because she has already been involuntarily terminated from the employment while

under medical care. Although an employer is not obligated to provide light duty work for an employee whose illness or injury is not work related, the involuntary termination from employment while under medical care was a discharge from employment. Thus, the burden of proof shifts to the employer.

Ref. 14, 15, 6

Since claimant was still under medical care and had not yet been released to return to work with or without restriction as of the date of separation, no disqualifying reason for the separation has been established. Benefits are allowed, provided claimant is otherwise eligible.

Benefits are allowed, provided the claimant is otherwise eligible.

Ref. 11, 134, 155

Inasmuch as the medical condition was not work-related but employer involuntarily terminated the employment before she was released to return to work with or without restriction, and claimant has established her ability to and availability for other work effective Tuesday, September 4, 2012, benefits are allowed.

DECISION:

The September 10, 2012 (reference 02) decision is modified in favor of the appellant. The claimant did not quit but was discharged for no disqualifying reason. Claimant is able to and available for work effective September 2, 2012. Benefits are allowed, provided she is otherwise eligible.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

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