

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA T COOLEY
Claimant

APPEAL NO. 07A-UI-06339-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA JEWISH SENIOR LIFE CENTER
Employer

OC: 06/03/07 R: 02
Claimant: Appellant (2)

Section 96.5(1)d – Separation Due to Illness/Injury

STATEMENT OF THE CASE:

Lisa Cooley filed an appeal from a representative's decision dated June 21, 2007, reference 01, which denied benefits based on her separation from Iowa Jewish Senior Life Center. After due notice was issued, a hearing was held by telephone on July 12, 2007. Ms. Cooley participated personally and was represented by Max Schott, Attorney at Law. Exhibits A through U were admitted on Ms. Cooley's behalf. The employer participated by Marlene Wiese, Accounting Manager, and Karol Rousch, Memory Care Director.

ISSUE:

At issue in this matter is whether Ms. Cooley was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Cooley began working for Iowa Jewish Senior Life Center on November 10, 2006, as a full-time certified nursing assistant. She sustained a work-related injury when she tripped over a cord and her knee struck a bedrail. The employer provided medical treatment for the injury through Dr. Richard McCaughey, who took her off work. Dr. McCaughey released Ms. Cooley to full duty effective May 10, 2007, as she was discharged from his care as it related to her knee injury.

Ms. Cooley continued to have back pain as of May 10. Because she had been receiving treatment for her back from her personal doctor prior to her work injury, Dr. McCaughey did not feel the problems with her back were work-related. Ms. Cooley advised the employer she could not return to work on May 10 because she was still experiencing back pain. She indicated she would be receiving care from her personal doctor. Her personal doctor, Dr. Gary Greenberg, provided excuses taking Ms. Cooley off work. Dr. Greenberg is of the opinion that Ms. Cooley's fall caused an aggravation of her preexisting back condition, as she twisted her back when she fell.

On or about May 10, Ms. Cooley asked the employer whether light-duty work was available, but it was not. She was told she was being placed on "prn" status until such time as she obtained a complete release to perform her normal job. As of the date of the hearing, she had not been released to full duty. She is limited to lifting no more than 25 pounds and is to avoid stooping or

bending with her knees straight. Ms. Cooley retains the functional ability to work in the clerical field or as a cashier. She can also perform desk work or telemarketing. She completed a medical assistant's program at Des Moines Area Community College. Her physical condition does not preclude all work activity.

REASONING AND CONCLUSIONS OF LAW:

Ms. Cooley became separated from employment on March 30 because she fell at work and injured her knee. The fall also aggravated a preexisting back condition. The employer was made aware of the need to be absent as a result of the injury. Dr. McCaughey released her on May 10, as her knee problem had resolved itself. However, she still had back pain. She provided documentation from her personal doctor that she could not perform her normal job due to her back. Ms. Cooley reoffered her services to perform light-duty work but none was available. The employer will not allow her to return until she has a full release. Inasmuch as the employer did not make suitable comparable work available for Ms. Cooley when she reoffered her services on or about May 10, 2007, she is entitled to job insurance benefits pursuant to Iowa Codes section 96.5(1)d.

The administrative law judge appreciates that Ms. Cooley did not have a full release when she reoffered her services. However, where the injury necessitating the absence was work-related, an individual does not have to have a complete release when she reoffers her services. See Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa 1985). The administrative law judge is satisfied from the evidence that Ms. Cooley's back condition was aggravated by her fall in March of 2007. Therefore, the injury that prevented her from being fully released was work-related.

Ms. Cooley still has restrictions. However, the restrictions do not preclude all work activity. She retains the mental and physical ability to engage in some type of work that is engaged in by others as a means of livelihood. She can work as a clerical person, cashier, telemarketer, or hotel front desk clerk. The administrative law judge concludes that she is able to and available for work within the meaning of Iowa Code section 96.4(3).

DECISION:

The representative's decision dated June 21, 2007, reference 01, is hereby reversed. Ms. Cooley was separated from employment for no disqualifying reason. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw