

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**JAMIE L ALERTSEN
PO BOX 49
609 JASPER ST #5
PLEASANTVILLE IA 50225**

**CENTRAL IOWA HOSPITAL CORP
ATTN HUMAN RESOURCES
1313 HIGH ST #111
DES MOINES IA 50309-3119**

**Appeal Number: 04A-UI-08255-CT
OC: 07/04/04 R: 02
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Central Iowa Hospital Corporation (CIHC) filed an appeal from a representative's decision dated July 23, 2004, reference 02, which held that no disqualification would be imposed regarding Jamie Alertsens separation from employment. After due notice was issued, a hearing was held by telephone on August 23, 2004. Ms. Alertsens participated personally. The employer participated by Barb Owca, Human Resources Business Partner, and Ruth Eichenseer, Disability Coordinator.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Alertsén began working for CIHC on August 27, 2003 as a full-time supply technician. She left work on April 12, 2004 because it was anticipated that she would have surgery to place a screw in her ankle on May 12. She provided medical documentation from her family doctor that she needed to be off work as of April 12. The surgery was cancelled after it was learned that she was pregnant. Ms. Alertsén notified the employer on April 29 that she would not be undergoing surgery as planned.

When she left on April 12, the employer anticipated that Ms. Alertsén would be gone for two to three months. Her job was not left open pending her return. On April 23, 2004, the position was opened for recruitment, meaning it was no longer available to Ms. Alertsén. She was placed on short-term disability as a result of her medical condition. On or about June 17, the employer received notification that Ms. Alertsén had been released by her surgeon to return to work as of May 11. When she spoke to the employer on June 22, she indicated she did not know she had been released. She had seen her surgeon on May 11 and fitted with a foot brace. She was given a return appointment for July but not told she could return to work activity. Ms. Alertsén was notified on June 22 that she no longer had employment with CIHC. Had she returned to work on May 11, she would have had to compete with others for available positions. She filed her claim for job insurance benefits effective July 2, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Alertsén was separated from employment for any disqualifying reason. She did not voluntarily quit. Her job became unavailable to her while she was off work for medical reasons. Her job became unavailable as of April 24, 2004. For the above reasons, the separation shall be considered a discharge and not a voluntary quit. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Alertsén was considered discharged as of June 22 because she had not returned to work on May 11. However, the doctor had not advised her that she could return to work. Therefore, she did not knowingly fail to return to CIHC when released by her doctor. Moreover, her job was not held open pending her return. Therefore, even if she had returned to the employer on May 11, she would not necessarily have returned to her former position. She would have had to compete with others for whatever positions were available at the time. Based on the foregoing, the administrative law judge concludes that Ms. Alertsén was unemployed because her job was not held open pending her return and not because she failed to return to work when released. Iowa law does not require that an individual re-offer her services to the employer after recovering from an injury where the employer has already replaced the individual. The evidence does not establish any acts of misconduct on Ms. Alertsén's part. For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated July 23, 2004, reference 02, is hereby affirmed. Ms. Alertsén was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/pjs