

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NETA I KISNER**  
Claimant

**APPEAL NO. 08A-UI-06900-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MERCY HOSPITAL OF  
FRANCISCAN SISTERS**  
Employer

**OC: 06/22/08 R: 04**  
**Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Neta Kisner filed an appeal from a representative's decision dated July 28, 2008, reference 01, which denied benefits based on her separation from Mercy Hospital. After due notice was issued, a hearing was held by telephone on August 11, 2008. Ms. Kisner participated personally. The employer participated by Maureen Nolan, Human Resources Manager, and Bonnie Hageman, Long-Term Care Manager. Exhibits 1 through 14 were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Ms. Kisner 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. Kisner began working for Mercy Hospital in Oelwein, Iowa, on September 5, 2006 and was employed full time as a patient care assistant. Her last day at work was December 5, 2007. Ms. Kisner then began a medical leave of absence to undergo a cervical fusion. She submitted periodic medical documentation to support leave time through May 13, 2008. She was released to return to work without restrictions effective May 14, 2008.

Ms. Kisner was in touch with human resources on May 15 regarding her release to return to work. She indicated she was in too much pain to return to work at that time. Her usual job had been filled during her absence. She was told that the only vacancy for which she was qualified had been offered to and accepted by another individual.

The employer notified Ms. Kisner in a letter dated May 15, 2008 that she had 30 days in which to find a new job with the employer or she would be terminated. She could apply for available positions at Mercy Hospital or at Covenant Medical Center in Waterloo. The letter advised that her employment would be terminated effective June 12, 2008 if she had not been offered a new

position by the employer by that date. Ms. Kisner reviewed available postings on the employer's web site. During the 30-day period, there were no vacancies at Mercy Hospital for which she was qualified. There were vacancies at Covenant Medical Center but the work was in Waterloo, 40 miles from her home. The commute to her job with Mercy Hospital in Oelwein was only two miles.

The employer notified Ms. Kisner on June 16 that her employment was terminated because she had not found other work by June 12. Her failure to obtain a position within 30 days of when she was released to return to work was the sole reason for the separation.

#### **REASONING AND CONCLUSIONS OF LAW:**

Ms. Kisner did not voluntarily quit her employment. Her position was filled while she was on an extended medical leave of absence. She was discharged because she was unable to find other employment within 30 days of when she was released to return to work. The employer did not have an available vacancy when Ms. Kisner was released on May 14. The only position for which she was qualified had already been offered to and accepted by another individual. Therefore, even if she had not had complaints of pain at that time, the position was not available.

Ms. Kisner made a good-faith effort to find another job with the employer. The employer confirmed during the hearing that she did not qualify for any positions that became available at Mercy Hospital during the 30 days following her release to return to work. Although there were vacancies at Covenant Medical Center, it was not unreasonable for Ms. Kisner to decline to apply for work 40 miles from her home. The employer initiated her separation when she was notified of her discharge from the employment. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Kisner's discharge was not prompted by any acts of misconduct on her part, only her inability to find other employment within the facility. For the above reasons, the administrative law judge concludes that her separation was not a disqualifying event. Accordingly, benefits are allowed.

#### **DECISION:**

The representative's decision dated July 28, 2008, reference 01, is hereby reversed. Ms. Kisner was discharged by Mercy Hospital for no disqualifying reason. Benefits are allowed, provided she satisfies all other conditions of eligibility.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

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