

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANISHA L BEAMAN
Claimant

APPEAL NO. 09A-UI-02403-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

**Original Claim: 11/23/08
Claimant: Respondent (4-R)**

Section 96.5(1)d – Separation due to Illness/Pregnancy
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Care Initiatives filed an appeal from a representative's decision dated February 5, 2009, reference 01, which held that no disqualification would be imposed regarding Danisha Beaman's separation from employment. After due notice was issued, a hearing was held by telephone on March 10, 2009. Ms. Beaman participated personally. The employer participated by Mary Bienfang, Human Resources Manager, and LuAnn Modlin, Administrator. Exhibits One through Four were admitted on the employer's behalf. The employer was represented by Lynn Corbeil of TALX Corporation.

ISSUE:

At issue in this matter is whether Ms. Beaman 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. Beaman began working for Care Initiatives on June 12, 2007 and worked full time as a certified nursing assistant. Due to complications with her pregnancy, her doctor took her off work on October 2, 2008. The doctor released her to return to work on October 20 but advised that she not lift more than 20 pounds. She was not allowed to return to work, because the bulk of her job required that she be able to lift at least 50 pounds. The employer told her she should return when she had a complete release.

On January 7, 2009, Ms. Beaman was notified that she had exhausted all available leave. Because she had not provided the employer with a date by which she expected to return, the employer considered her to have abandoned her job. The letter invited her to contact the employer if she was interested in future employment. If she does return, it will be as a new employee. Ms. Beaman's baby was born on January 26, 2009, and she was released to return to work on March 9. She has not re-offered her services to the employer and does not intend to do so.

Ms. Beaman filed a claim for job insurance benefits effective November 23, 2008. She has received a total of \$1,431.00 in benefits from November 23, 2008 through January 24, 2009.

REASONING AND CONCLUSIONS OF LAW:

When Ms. Beaman initially filed her claim for job insurance benefits effective November 23, 2008, she was off work due to complications with her pregnancy. She could not perform her normal job because of restrictions imposed by her doctor. Although she re-offered her services after being gone for two weeks in October, she did not have a full release at the time. In order to receive benefits pursuant to Iowa Code section 96.5(1)d, an individual must have a full release when she re-offers her services. See Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa App 1985). Because Ms. Beaman did not have a full release when she re-offered her services on or about October 20, she is not entitled to benefits as of November 23, 2008.

Ms. Beaman no longer had a job with Care Initiatives as of January 7, 2009. The administrative law judge does not share the employer's opinion that she abandoned her job. She was on medical leave. The employer continued the leave in spite of the fact that it had no contact with Ms. Beaman between October 20 and January 7. The employer initiated the separation when Ms. Beaman was notified that her job was no longer available. Because she had already been separated from employment when she was released to resume work activity on March 9, she was not required to re-offer her services at that point.

A separation initiated by the employer is a discharge. An individual who was discharged is only disqualified from receiving benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. Ms. Beaman's separation was due to her attendance. Inasmuch as the absences that prompted the discharge were covered by a medical leave of absence, they are excused absences. Excused absences may not form the basis of a misconduct disqualification, regardless of how excessive. Therefore, Ms. Beaman's separation of January 7, 2009 was not a disqualifying event. Although the letter of discharge invited her to reapply for work, she would have come back as a new employee. For the reasons cited herein, benefits are allowed as of the Sunday of the week in which Ms. Beaman was released to return to full duty, March 8, 2009.

Ms. Beaman has received benefits for a period of time she was not eligible to receive benefits. As a general rule, an overpayment of job insurance benefits must be repaid. If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if Ms. Beaman will be required to repay benefits already received.

DECISION:

The representative's decision dated February 5, 2009, reference 01, is hereby modified. Ms. Beaman is denied benefits effective November 23, 2008, as she was on a leave of absence and did not satisfy the requirements of Iowa Code section 96.5(1)d. Benefits are allowed effective March 8, 2009, provided she is otherwise eligible, as she was discharged for no disqualifying reason. This matter is remanded to Claims to determine the amount of any overpayment and whether Ms. Beaman will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw