

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TAMARA E LONG**

Claimant

**APPEAL NO: 10A-UI-06477-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TABOR MANOR CARE CENTER INC**

Employer

**OC: 03/21/10**

**Claimant: Appellant (4/R)**

Section 96.4-3 – Able and Available  
Section 96.7-2-a(2) – Charges Against Employer’s Account

**STATEMENT OF THE CASE:**

Tamara E. Long (claimant) appealed a representative’s April 19, 2010 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits in relation with her employment with Tabor Manor Care Center, Inc. (employer). Hearing notices were mailed to the parties’ last-known addresses of record for a telephone hearing to be held on June 18, 2010. The claimant received the hearing notice and responded by calling the Appeals Section on May 24, 2010. She indicated that she would be available at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge called that number at the scheduled time for the hearing, the claimant was not available; therefore, she did not participate in the hearing. The employer responded to the hearing notice and indicated that Mitch Worcester would participate as the employer’s representative. When the administrative law judge contacted Mr. Worcester for the hearing, he agreed that the administrative law judge should make a determination modifying the representative’s decision based upon a review of the available information including his informal statements. Based on a review of the available information and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Was the claimant eligible for unemployment insurance benefits by being able and available for work? Is the employer’s account subject to charge?

**FINDINGS OF FACT:**

The claimant started working for the employer on December 29, 2009. Her last day of work was on or about March 10, 2010. There was a separation from employment on or about March 12, 2010, related to the claimant’s then medical condition related to her ability to perform the duties of her job. A determination has as yet not been made as to what type of separation occurred and whether or not it was disqualifying.

On March 19 the claimant obtained a release from her doctor indicating that she “has been released to return to work with no restrictions” as of that date. The claimant established an

unemployment insurance benefit year effective March 1, 2010. The claimant filed weekly claims for that week and through three additional weeks, through the week ending April 17, 2010. The employer was unaware of any other change in her medical situation during those four weeks.

After April 17 the claimant ceased filing weekly claims; the employer understood that the claimant had reoccurring medical issues, which may have again been resolved, at least temporarily, in early June 2010. However, the claimant has not filed a weekly continued claim for benefits since the week ending April 17.

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

With respect to any week in which unemployment insurance benefits are sought, In order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3. To be found able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." Sierra v. Employment Appeal Board, 508 N.W.2d 719, 721 (Iowa 1993); Geiken v. Lutheran Home for the Aged, 468 N.W.2d 223 (Iowa 1991); 871 IAC 24.22(1). "A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required." 871 IAC 24.22(1)a.

The claimant has established that as of March 19, 2010 she was deemed by a doctor as able to work. As of the benefit week beginning March 21, 2010, through the benefit week ending April 17, 2010, benefits are allowed, if the claimant is otherwise eligible. Should there be further weeks of benefits claimed in the future, her condition as being able and available for work would need to be reviewed for those periods.

An issue as to whether the claimant's separation from employment was disqualifying or not arose during the hearing. This issue was not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5). A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a. In the event a determination is made that the separation was a voluntary quit on the part of the claimant, and further that it was due to a non-work-related medical condition, a further consideration would be whether upon being released by her doctor as of March 19, 2010 she sought to return to work with the employer but no work was provided for her. Iowa Code § 96.5-1-d; 871 IAC 24.25(35).

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code § 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code § 96.19-3. The claimant's base period began October 1, 2008 and ended September 30, 2009. The employer did not employ the claimant during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits that might be paid to the claimant.

**DECISION:**

The representative's April 19, 2010 decision (reference 01) is modified in favor of the claimant. The claimant was able to work and available for work effective March 19, 2010, and was qualified to receive unemployment insurance benefits for the period between March 21 and April 17, 2010, if she was otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the separation issue. The employer's account is not subject to charge in the current benefit year.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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