

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

MERIAN E HARRIS
PO BOX 366
1500 – 2ND ST
KEOSAUQUA IA 52565

GOOD SAMARITAN SOCIETY INC
% TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-05661-CT
OC: 04/18/04 R: 03
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:

Good Samaritan Society, Inc. filed an appeal from a representative's decision dated May 5, 2004, reference 01, which held that no disqualification would be imposed regarding Merian Harris' separation from employment. After due notice was issued, a hearing was held by telephone on June 15, 2004. Ms. Harris participated personally. The employer participated by Bob Johannsen, Administrator.

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. Harris began working for Good Samaritan Society, Inc., in December of 1996 as a certified nursing assistant. She worked 16 hours on alternate weekends. Ms. Harris last worked on August 10, 2003 when she left work to undergo hip surgery. The surgery was not necessitated by her employment.

Ms. Harris was first released to return to work in December of 2003. However, because she was using a cane, the employer did not allow her to return to work at that time. She was told she could not return to work as long as she was using a cane. On April 7, 2004, Ms. Harris was in the facility for an in-service when she was advised of her discharge. She was still using a cane at that point.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Harris was separated from employment for any disqualifying reason. An individual who was discharged from employment is only 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). The employer acknowledged during the hearing that there was no misconduct on Ms. Harris' part as contributing to the discharge. She was discharged because she had been unable to return to work without a cane after hip surgery. Inasmuch as there was no misconduct, no disqualification is imposed.

DECISION:

The representative's decision dated May 5, 2004, reference 01, is hereby affirmed. Ms. Harris was discharged but not for misconduct. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/kjf