

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

VELINDA D WASHINGTON
1478 JACKSON ST
DUBUQUE IA 52001

OPERATION NEW VIEW
ATTN FISCAL OFFICER
1473 CENTRAL AVE
DUBUQUE IA 52001-4853

EMILIE RICHARDSON
ATTORNEY AT LAW
1400 UNIVERSITY AVE STE D
DUBUQUE IA 52001-5931

Appeal Number: 06A-UI-04245-H
OC: 03/05/06 R: 04
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(1) – Quit

STATEMENT OF THE CASE:

The employer, Operation New View, filed an appeal from a decision dated April 6, 2006, reference 01. The decision allowed benefits to the claimant, Velinda Washington. After due notice was issued, a hearing was held in Dubuque, Iowa, on June 27, 2006. The claimant participated on her own behalf and was represented by Attorney Emilie Richardson. The employer participated by Human Resources Director Joy Davis, Program Director Peggy Hanniford and Team Coordinator Kay Hahn. Exhibits One, Two and Three were admitted into the record.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Velinda Washington was employed by Operation New View from November 11, 1999 until January 12, 2006. She was a full-time cook.

Ms. Washington suffered a work-related accident and was placed on restrictions from her physician. The permanent restrictions as of November 10, 2005 were not to lift more than 28 pounds knee to waist, no more than 4 pounds above shoulder, kneeling, crawling, climbing or squatting to "limited to comfort," and may lift 15 pounds waist to shoulder. The employer had placed her on restricted duty, largely doing paperwork and supervising some of the children.

On January 6, 2006, the claimant met with Program Manager Peggy Hanniford who asked her to start trying to resume some of the duties of cook by shopping for groceries on the following Monday. She was advised to go to a particular grocery store which offered help to people with physical restrictions by lifting items into the carts and into a customer's vehicle. The employer wanted to know if the teacher and the teacher associate could be relieved of some of the cook's duties and return to supervising the children.

Ms. Washington did the grocery shopping on January 9, 2006, but did not ask for any help, doing all of the lifting herself. She also did some of the cooking on January 10, 2006, again not asking for any help. As a result she was in considerable pain January 11 and 12, 2006, and did not come to work. However, she and Ms. Hanniford and other representatives of the employer met with her doctor on January 12, 2006. The doctor at that time said if her pain did not lessen to the point where she could resume more of her regular job duties, she might have to consider applying for social security disability.

The employer was aware Ms. Washington had an appointment with a psychiatrist on January 17, 2006, to assess her pain levels and try to deal with her medication. However, the claimant did not come to work again after January 10, 2006. On January 13, 2006, she talked to her supervisor, Kay Hahn, to say she would not be in to work and she did not know whether she would ever be able to return to any of her regular duties. Ms. Hahn told her she might have to take the doctor's suggestion of applying for social security benefits.

On Monday, January 16, 2006, Grace Brady, the teacher assistant, called Ms. Washington and asked her if she had quit. Ms. Brady asserted she had heard from others that the claimant was "done." Ms. Washington assumed she had been discharged and stopped coming to work.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

The claimant was unable to continue working because of the job-related injury she suffered. Any attempt to resume her regular duties resulted in increased pain. Where illness or disease

directly connected to the employment make it impossible for an individual to continue in employment because of a serious danger to health, termination of employment for that reason is involuntary and for good cause attributable to the employer even if the employer is free from all negligence or wrongdoing. Raffety v. IESC, 76 N.W.2d 787 (Iowa 1956). The claimant's separation is not a disqualifying event.

DECISION:

The representative's decision of April 6 2006, reference 1, is affirmed. Velinda Washington is qualified for benefits, provided she is otherwise eligible.

bgh/cs