

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

MARIE A TOMS
1415 S “B” ST LOT 17
ALBIA IA 52531

CARE INITIATIVES
c/o JOHNSON & ASSOCIATES
PO BOX 6007
OMAHA NE 68106-6007

Appeal Number: 04A-UI-01540-B4T
OC: 01/11/04 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 96.4-3 – Able and Available for Work

Section 96.5-1-d – Whether claimant left her employment and has requalified for benefits

STATEMENT OF THE CASE:

An appeal was filed on behalf of the employer from an unemployment insurance decision dated February 9, 2004, reference 01, that held, in effect, Marie A. Toms was eligible to receive unemployment insurance benefits provided she met all other eligibility requirements and the employer's account may be charged for benefits paid. An explanation of the decision was that the records indicate on January 14, 2004, she offered to return to work following her illness or injury and no work was available.

A telephone conference hearing was scheduled and held on March 22, 2004 pursuant to due notice. The claimant participated on her own behalf. Jean Eckardt testified for the employer,

which was represented by Roxanne Beckert of Johnson & Associates, a part of TALX UC eXpress.

FINDINGS OF FACT:

The administrative law judge, having examined the entire record in this matter, finds that: Marie A. Toms was employed with Care Initiatives as a Certified Nurses Aid (CNA) on March 27, 2002. During the tenure of the claimant's employment she was ill on numerous occasions and off work. The claimant notified the employer on each occasion when she was absent.

The claimant's illness was due to heavy lifting and limited lifting ability caused by the birth of a child prior to her employment with Care Initiatives. During the tenure of the claimant's employment she was never warned that her job was in jeopardy on any occasion.

On June 13, 2003, the claimant met with Jean Eckardt, Administrator at the Albia facility operated by Care Initiatives. The claimant explained that she was unable to lift weight in excess of 20 pounds when working with patients or performing other job duties at the facility. The claimant was restricted by the doctor from lifting more than 20 pounds. The medical condition of the claimant was due to child bearing and heavy lifting while she was employed at Care Initiatives.

On January 14, 2004, the claimant was called to the office of Jean Eckardt and informed that she was being let go because she could not meet the lifting requirements required of a certified nurses aid working at Care Initiatives.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Code Section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

The evidence in the record establishes that the claimant provided a statement from a licensed and practicing physician indicating that her work should be restricted to not lifting more than 20 pounds as a certified nurses aid. Otherwise, the claimant was able and available for work under the law.

The employer chose to discharge the claimant for being unable to comply with certain rules adopted by the employer leading to weight lifting.

The administrative law judge concludes that Marie A. Toms offered to return to work with Care Initiatives when she was released by a licensed and practicing physician to return to work with a 20-pound weight lifting restriction. Marie A. Toms has requalified for benefits within the intent and meaning of Iowa Code Section 96.5-1-d and is able and available for work within the intent and meaning of Iowa Code Section 96.4-3.

DECISION:

The unemployment insurance decision dated February 9, 2004, reference 01, is affirmed. Marie A. Toms is eligible to receive unemployment insurance benefits provided she meets all other eligibility requirements and the employer's account may be charged for benefits paid.

kjf/b