

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

TERRI L SMITH
1877 INDEPENDENCE AVE
WATERLOO IA 50703

CARE INITIATIVES
c/o JOHNSON & ASSOCIATES
PO BOX 6007
OMAHA NE 68106-0007

Appeal Number: 04A-UI-08182-BT
OC: 06/20/04 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:

Care Initiatives (employer) appealed an unemployment insurance decision dated July 19, 2004, reference 04, which held that Terri Smith (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 26, 2004. The claimant participated in the hearing. The employer participated through Alan Lakeside, Theresa Hardy, Angie Kopriva, and Roxanne Bekaert of Johnson & Associates.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a part-time licensed practical nurse from August 14, 2003 through January 29, 2004, although she was working full-time hours. She went on a non-work-related medical leave on December 4, 2003. She was discharged when she failed to return to work on January 27, 2004 and was a no-call/no-show that day and on January 29, 2004. She never provided the employer with any medical documentation.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. While the claimant contends she never told the employer she was released to return to work after her non-work-related medical leave, the employer contends the claimant advised she could return to work and failed to show up for work after knowing she had been put on the schedule. Since neither party appeared more persuasive than the other, the benefit of the doubt must be given to the claimant.

All terminations of employment are generally classified as layoffs, quits, discharges or other separations. 871 IAC 24.1(113)(a). A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer or an employer has discharged the claimant for work-connected misconduct. Iowa Code Sections 96.5-1 and 96.5-2-a.

The claimant's separation from employment was not due to any misconduct on her part nor did she quit her job. She is qualified to receive unemployment insurance benefits, provided she is otherwise eligible.

DECISION:

The unemployment insurance decision dated July 19, 2004, reference 04, is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

sdb/pjs