

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**SARAH J MAURER**  
Claimant

**CHRISTIAN OPPORTUNITY CENTER**  
Employer

**APPEAL NO. 15A-UI-09219-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/26/15**  
**Claimant: Appellant (2)**

Iowa Code § 96.4-3 – Able and Available  
Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated August 12, 2015 reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on August 12, 2015. Claimant participated personally. Employer participated by Angela DeCook. Employer's participation occurred after the record in the matter had been closed, and employer waived its right to have the hearing begin anew. Claimant's Exhibits A-E and Court's Exhibit 1 were admitted into evidence.

**ISSUES:**

Whether claimant is able and available for work?

Whether claimant was discharged for misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant worked full time for employer as a living skills advisor. On April 25, 2015 claimant was injured on a fall that did not take place at work. Claimant had surgery on a broken ankle and was placed on FMLA by her employer.

Claimant's recovery took a number of months. During this time claimant went to a physical therapist and made a positive recovery. Claimant received 12 weeks of FMLA leave before the time in which she was eligible ran out on July 24, 2015. On July 24, 2015 claimant had not received a release to return to work. Claimant explained to employer prior to July 24, 2015 that she believed that she would be released to return to work upon visiting her doctor in the next couple of days. Claimant had a doctor's appointment scheduled in early to mid August that she accelerated to July 29, 2015. As employer was not sure that claimant would be released upon her doctor's visit, employer terminated claimant's employment the day her FMLA ran out on July 24, 2015.

At claimant's doctor's visit of July 29, 2015 claimant was fully released to return to work without restrictions. Since that date claimant has consistently been applying for other jobs, both within her field of practice in business administration and in outside fields of work.

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

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Code § 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 Admin. Code r. 871-24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An 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.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Claimant did not quit her job, but was terminated on July 24, 2015. Said termination was based on claimant's not being able to come back to work the day that her FMLA had ended, as she had not received a release from her doctor. Claimant was terminated because employer believed that claimant might not be able to work for an extended period. The termination was in anticipation that claimant would not be able to return to work.

Claimant has shown through her doctor's documents that she established the ability to work as of July 29, 2015. Benefits shall be allowed effective July 29, 2015.

**DECISION:**

The decision of the representative dated August 12, 2015, reference 01 is reversed. As claimant has shown that she was not discharged for misconduct and is able and available for work, claimant is eligible to receive unemployment insurance benefits, effective July 29, 2015, provided claimant meets all other eligibility requirements.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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