

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**SARA J HOLMES**

Claimant

**APPEAL NO: 13A-UI-09233-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**

Employer

**OC: 07/07/13**

**Claimant: Appellant (4)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct  
Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated August 5, 2013, reference 01, that held she was discharged for misconduct on July 10, 2013, and benefits are denied. A telephone hearing was held on September 16, 2013. The claimant participated. Nancy Snyder, Administrator, and Beth Crocker, Representative, participated for the employer. Employer Exhibit 1 was received as evidence.

**ISSUE:**

Whether claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on October 27, 2008, and last worked for the employer as a full-time C.N.A. on July 10, 2012. Claimant suffered a job-related injury on July 11 and was granted medical leave from employment (FMLA) for the period from July 16 through October 5, 2012.

Claimant had a back injury that she attributes to her work. She went to a local emergency room for examination on July 11 but was not admitted. Dr. Arhens was her treating physician and later Dr. Wahl saw her as an orthopedic specialist. On September 12 Dr. Ahrens issued a medical statement stating no duty for claimant until further notice.

After the leave expired on October 5, claimant's attorney requested a first report of injury for the employer on October 29. The employer terminated claimant on November 1 for her continuing absence from work after her medical leave. Claimant had an appointment with an orthopedic surgeon on November 16, but he advised against surgery. Dr. Ahrens has imposed a 15-pound lifting restriction and claimant acknowledges she cannot work as a C.N.A.

Claimant is currently participating in a vocational rehab program to help her obtain employment.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

871 IAC 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.

The administrative law judge concludes employer failed to establish claimant was discharged for misconduct on November 1, 2012.

Being unable to return to work from a leave of absence due to medical restriction is not an act of misconduct. The employer witness was not present when the employment separation occurred and lacked personal knowledge to refute claimant testimony. Claimant kept the employer informed about her health condition and the last doctor statement sent to the employer was no duty until further notice.

If the employer wanted claimant to cover her continuing employment absence, it could have notified claimant she needed to request an extended leave. What is clear is that claimant had not received an unrestricted release to return to work as of November 1. The timing of the termination appears to be in response to claimant's attorney asking for a first report of injury claiming a work-related matter.

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".

The administrative law judge further concludes claimant does not meet the availability requirements of the law effective July 7, 2013. Claimant has not received an unrestricted medical release and she concedes she cannot work as a C.N.A. like she has for the past four years. She is going through vocational rehab to train her for work that she can perform given her lifting restriction.

**DECISION:**

The department decision dated August 5, 2013, reference 01, is modified. The claimant was not discharged for misconduct on November 1, 2012. Claimant is entitled to benefits, provided she is otherwise eligible. She is not currently able and available for work effective July 7, 2013. Benefits are denied.

---

Randy L. Stephenson  
Administrative Law Judge

---

Decision Dated and Mailed

rls/css