

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

CONNIE M GRETILLAT
602 OAK ST
UNION IA 50258

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

Appeal Number: 04A-UI-04430-HT
OC: 03/28/04 R: 02
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
Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer, Care Initiatives, filed an appeal from a decision dated April 13, 2004, reference 01. The decision allowed benefits to the claimant, Connie Gretillat. After due notice was issued a hearing was held by telephone conference call on May 11, 2004. The claimant participated on her own behalf and with witnesses Carol Hackney and Dolores Daleske. The employer participated by Administrator Monte Priske and was represented by Johnson & Associates in the person of Roxanne Bekaert. Exhibits One and Two 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: Connie Gretillat was employed by Care Initiatives from September 6, 1986 until March 26, 2004. She was the full-time dietary manager. The job duties of the dietary manager include doing physical work in the kitchen if necessary.

Ms. Gretillat was on medical leave from September 22 until November 20, 2003, for a knee replacement surgery. She was released to return to work without restrictions by her physician. A second notice from the doctor was faxed to the facility in December 2003, limiting her to standing for not more than one hour before resting.

In February 2004, the claimant was performing physical work in the kitchen, which was bothering her knee. She spoke with Administrator Monte Priske who set up an examination to determine her physical limitations. The claimant did not perform all of the necessary demonstrations for the examiner, insisting that her physician had told her not to, though there was no documentation to support that. She met with Mr. Priske again on February 25, 2004, and stated she could not continue to do all of the physical work required by her job. The next day he notified her that if she would not perform the essential functions of the job, she would be discharged, but would be allowed to resign and give 30 days notice in order to be paid for her accumulated vacation time. She agreed to do this.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant voluntary quit. The judge concludes she did 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.

871 IAC 24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

The claimant was given the choice of resigning or being discharged. Under the provisions of the above Administrative Code section, this is not a voluntary quit.

The next issue is whether the claimant was discharged for misconduct. The judge concludes she was not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant was discharged because she was no longer capable of performing all of the physical requirements of the job. This is not the result of a willful and deliberate refusal but because of Ms. Gretillat's knee replacement. There was no misconduct and disqualification may not be imposed.

DECISION:

The representative's decision of April 13, 2004, reference 01, is affirmed. Connie Gretillat is qualified for benefits provided she is otherwise eligible.

bgh/kjf