

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**CYNTHIA L HAIRE**  
Claimant

**THARALDSON EMPLOYEE MANAGEMENT  
CO**  
Employer

**APPEAL NO. 14A-UI-08064-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/06/14**  
**Claimant: Appellant (4)**

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 July 29, 2014, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on August 26, 2014. Claimant participated. Employer failed to respond to the hearing notice and did not participate. Claimant agreed on the record to waive time for notice to discuss the additional issue of whether claimant is able and available for work.

**ISSUES:**

Whether claimant was discharged for misconduct.

Whether claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: As claimant was the only participant in the hearing, all findings of fact are gleaned from claimant's testimony. Claimant last worked for employer on March 10, 2014. Prior to claimant's leaving work, she presented a doctor's note to employer stating that she would be on leave for an extended period of time as she was having neck surgery.

Subsequent to the neck surgery, claimant kept in contact with employer by weekly phone calls. When claimant called in to employer on June 22nd, employer told claimant that she no longer had a job as employer needed to separate her from her job in order to hire a new worker.

Claimant was not ready to return to work on June 22, 2014, and continues to be unable to work. Claimant went to a doctor on August 5, 2014. The doctor explained to claimant that it could be up to six more months before claimant will be able to obtain a doctor's release to return to the work force.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning attendance. Claimant was not warned concerning this policy.

The last incident, which brought about the discharge, fails to constitute misconduct because claimant had given employer a doctor's note explaining that she would be out of work recovering from her neck surgery. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

The administrative law judge next looks at whether claimant is able and available for work. Claimant, on the record, agreed to waive time for notice on this issue, and address it while the hearing was taking place. Claimant stated that she has not been released by her doctor to date, and that this release may not come for a number of months. As such, claimant is not in a position to pursue any employment at this time. Claimant is not able and available for work.

**DECISION:**

The decision of the representative dated July 29, 2014, reference 01, is modified such that appellant was not discharged for an act of misconduct and is not disqualified from the receipt of unemployment benefits once claimant is able to show that she is able and available for work.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

bab/pjs