

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 S HALSEY
913 – 15TH ST
ONAWA IA 51040-1319

BURGESS HEALTH CENTER
ATTN JEAN PEKAREK
1600 DIAMOND AVE
ONAWA IA 51040-1548

Appeal Number: 06A-UI-02489-CT
OC: 01/22/06 R: 01
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)d – Separation Due to Illness/Injury
Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Burgess Health Center (Burgess) filed an appeal from a representative's decision dated February 20, 2006, reference 01, which held that no disqualification would be imposed regarding Connie Halsey's separation from employment. After due notice was issued, a hearing was held by telephone on March 21, 2006. Ms. Halsey participated personally. The employer participated by Jean Pekarek, Director of Human Resources, and Patty Sandman, Senior Director of Nursing. Exhibits One and Two were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Halsey began working for Burgess on January 2, 2002 as a full-time nurse technician. Her last day of work was July 29, 2005, at which time she left work due to back problems. Ms. Halsey had sustained a work-related back injury in October of 2004. She underwent surgery on September 8, 2005.

Ms. Halsey's doctor released her to return to work on October 20, 2005. She was restricted to desk work only but, the employer did not have any work available that fit her restrictions. The employer has not had full-time work available within Ms. Halsey's restrictions since October of 2005. She has been invited to apply for positions as they become available. She will have to compete with others for any available vacancies.

Ms. Halsey has a high school education with no specialized training in other fields. She has over 28 years of experience in the insurance industry performing both data entry and claims processing.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Halsey was separated from employment for any disqualifying reason. She left work on or about July 29, 2005 because of problems with her back, problems that necessitated surgery on September 8. The employer was at all times aware of her need to be absent for medical care. Ms. Halsey returned and re-offered her services to the employer when released by her doctor. However, the employer did not have suitable comparable work available due to her restrictions. Where an individual's injury is work-related, the law does not require a complete release when services are re-offered. See Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa 1985).

Because the employer did not have suitable work for Ms. Halsey when she re-offered her services after being gone due to a work-related injury, she is entitled to job insurance benefits pursuant to Iowa Code section 96.5(1)d. She remains able to work but cannot at this time return to her former job as a nurse technician due to the physical demands of the job. The law does not require that an individual be able to perform her usual job, only that she be able to engage in some work that is engaged in by others as a means of livelihood. See 871 IAC 24.22(1). Given her extensive history of work in the insurance industry, the administrative law judge believes Ms. Halsey has the necessary skills to perform work in a number of sedentary jobs that would not aggravate her condition. For the above reasons, the administrative law judge concludes that Ms. Halsey is able to work as required by Iowa Code section 96.4(3).

DECISION:

The representative's decision dated February 20, 2006, reference 01, is hereby affirmed. Ms. Halsey was separated from Burgess for no disqualifying reason and is able to work. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/s