

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NOLA N ANTONEN
Claimant

APPEAL NO. 10A-UI-11884-SW

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA HOME CARE LLC
Employer

**OC: 07/24/11
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge
Section 96.4-3 – Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated September 7, 2011, reference 01, that concluded she was not able to work. An in-person hearing was held on October 12, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer and the employer stated it was not contesting the case. Exhibit A was admitted into evidence at the hearing.

ISSUES:

Was the claimant discharged for work-connected misconduct?
Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant worked as a home health aide from May 8, 2007, to July 20, 2011. She provided home health services to two persons with cerebral palsy in Perry, Iowa, and was normally scheduled about 36 hours per week.

On July 25, 2011, the claimant's doctor stated the claimant was able to work with restrictions that she not work at night, no lifting of over 40 pounds, no climbing stairs, and no more than 30 hours per week of work. When she presented her restrictions to her employer, she was informed that the employer would not allow her to work until she was released to work without restrictions and she was being placed on a leave of absence until she was released without restrictions. The claimant went to the doctor on August 9 and the doctor prepared a statement that the restrictions the claimant had would not be changing in the immediate future. Consequently, the employer discharged the claimant from employment.

The claimant filed a new claim for unemployment insurance benefits with an effective date of July 24, 2011.

The claimant has a high school diploma and a year of nursing training. She has been certified a nursing assistant in the past.

Her past job experience includes gas station manager and cashier, certified nursing assistant, restaurant server, and home health aide.

The claimant has applied for cashier and restaurant server work. She is able and willing to work full time if offered such a job.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a.

There is no evidence the claimant quit her job or was discharged for work-connected misconduct. I recognize that Iowa Code § 96.5-1 provides a disqualification for individuals who voluntarily quit employment and Iowa Code § 96.5-1-d operates as an exception to that rule for individuals who voluntarily leave employment due to illness under certain circumstances. To voluntarily quit, however, means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992). In this case, the claimant never quit employment or intended to leave her job. She desired to continue to work but the employer would not allow her to work. The claimant was dismissed because she was unable to perform her previous job due to restrictions, which is not misconduct.

This is like Wills v. Employment Appeal Board, 447 N.W.2d 137 (Iowa 1989), in which the Supreme Court considered the case of a pregnant CNA who went to her employer with a physician's release that limited her to lifting no more than 25 pounds. Wills filed a claim for benefits after the employer did not let her return to work because of its policy of never providing light-duty work. The Supreme Court ruled that Wills became unemployed involuntarily and was able to work because the weight restriction did not preclude her from performing other jobs available in the labor market.

The next issue is whether the claimant was able to and available for work as required by Iowa Code § 96-4-3. The unemployment insurance rules provide that a person must be physically able to work, not necessarily in the individual's customary occupation, but in some reasonably suitable, comparable, gainful, full-time endeavor that is generally available in the labor market. 871 IAC 24.22(1)b. The evidence establishes that the claimant was able to perform gainful work, but with restrictions. There is work available in the labor market meeting such restrictions, and the claimant has shown she was available for work.

The rules further provide that a claimant is considered unavailable for work if the claimant requested and was granted a leave of absence, since the period is deemed a period of voluntary unemployment. 871 IAC 23(10). In this case, however, the claimant did not request the leave of absence so that she cannot be considered to have been voluntarily unemployed.

DECISION:

The unemployment insurance decision dated September 7, 2011, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs