

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GAY L PHELPS**  
Claimant

**APPEAL NO. 14A-UI-11618-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DOHERTY STAFFING SOLUTIONS**  
Employer

**OC: 11/17/13**  
**Claimant: Appellant (2-R)**

Iowa Code Section 96.5(2)(a) – Discharge

**STATEMENT OF THE CASE:**

Gay Phelps filed a timely appeal from the October 30, 2014, reference 05, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that she had voluntarily quit on September 24, 2014 without good cause attributable to the employer. After due notice was issued, a hearing was held on December 1, 2014. Ms. Phelps participated. Glenda Niemiec represented the employer and presented additional testimony through Kim Johnson. Exhibits A through D were received into evidence.

**ISSUE:**

Whether the claimant separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Doherty Staffing Solutions is a temporary employment agency. In June 2014, Doherty placed Gay Phelps in a full-time temporary work assignment at Polaris in Spirit Lake. The work was assembly work and required that Ms. Phelps stand throughout her shift. The work hours were 6:00 a.m. to 3:30 p.m., Monday through Friday. On September 24, 2014, Ms. Phelps suffered an apparent seizure at work. Ms. Phelps does not suffer from epilepsy and experienced seizures only on September 24, 2014. Ms. Phelps was transported to a local hospital. Ms. Phelps was released from the hospital the same day. Ms. Phelps then suffered another seizure at home. Ms. Phelps was transported to another hospital in Spencer. Ms. Phelps was evaluated and released the same day. The doctor at Spencer Hospital released Ms. Phelps to return to work effective September 26, 2014, but restricted her to sedentary work for two weeks or until she was released by her primary care physician to return to work without restrictions. On September 26, 2014, Ms. Phelps contacted Kim Johnson, Onsite Manager, about returning to work. Ms. Johnson told Ms. Phelps that the assignment was ended and that Ms. Phelps could not return for further work with the employer until she was released to return to work without restrictions. Ms. Phelps continued under the care of a doctor and underwent an MRI on October 24, 2014. The MRI was normal and Ms. Phelps was released to return to work without restrictions. Ms. Phelps contacted Doherty Staffing to notify the employer that she had been

released to return to work without restrictions. The employer placed Ms. Phelps in a new assignment at Polaris with the same duties Ms. Phelps had previously performed. However, the employer treated Ms. Phelps as a new hire and reduced her wage from what it had been as of September 24, 2014.

Ms. Phelps established an “additional claim” for unemployment insurance benefits that was effective October 12, 2014 and has continued to claim weekly benefits ever since, despite her return to full-time employment on October 28, 2014.

### **REASONING AND CONCLUSIONS OF LAW:**

Workforce Development rule 871 IAC 24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

Ms. Phelps did not voluntarily separate from the employment. In other words, she did not voluntarily quit. Ms. Phelps presented the employer with a request for temporary accommodation of a temporary medical issue and the employer elected not to provide the accommodation. The employer had an obligation to provide Ms. Phelps with reasonable accommodations that would allow her to continue in the work. See Sierra v. Employment Appeal Board, 508 N.W. 2d 719 (Iowa 1993). In Wills v. Employment Appeal Board, the Supreme Court of Iowa held that an employee did not voluntarily separate from employment where the employee, a C.N.A., presented a limited medical release that restricted the employee from performing significant lifting, and the employer, as a matter of policy, precluded the employee from working so long as the medical restriction continued in place. See Wills v. Employment Appeal Board, 447 N.W.2d 137 (Iowa 1989). In Wills, the Court concluded that the employer's actions were tantamount to a discharge.

Doherty Staffing Solutions elected not to approach Polaris with a request for temporary modification of Ms. Phelps' work duties or to provide Ms. Phelps with another temporary assignment that would meet her need for temporary accommodation. In addition, the employer notified Ms. Phelps that the assignment, and the employment, were done unless and until Ms. Phelps could return to work without restrictions. In other words, the employer discharged Ms. Phelps from the employment. The discharge was not based on misconduct and would not

disqualify Ms. Phelps for unemployment insurance benefits. See Iowa Code section 96.5(2)(a) (regarding discharges for misconduct) and Iowa Admin. Code section 871 – 24.32(1)(a) (regarding discharges for misconduct). Ms. Phelps would be eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits.

The remaining issue is whether Ms. Phelps has been able to work and available for work within the meaning of the law since she established the claim that was effective October 12, 2014. That issue was not set for hearing. This matter will be remanded to the Benefits Bureau so that the work ability and work availability issues may be adjudicated.

**DECISION:**

The claims deputy's October 30, 2014, reference 05, decision is reversed. The claimant was discharged on September 26, 2014 for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

This matter is remanded to the Benefits Bureau for determination of whether the claimant has been able to work and available work within the meaning of the law since October 12, 2014.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs