

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MICHELLE S MICHELS**

Claimant

**APPEAL 17A-UI-04695-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CEDAR RAPIDS COMM SCHOOL DIST**

Employer

**OC: 04/02/17**

**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

Iowa Code § 96.5(1) – Voluntary Quitting

Iowa Code § 96.5(1)d – Voluntary Quitting/Illness or Injury

Iowa Admin. Code r. 871-24.26(6) – Separation Due to Illness or Injury

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

Cedar Rapids Community School District (employer) filed an appeal from the April 25, 2017, reference 03, unemployment insurance decision that allowed benefits based upon the determination Michelle S. Michels (claimant) was not discharged for willful or deliberate misconduct. The parties were properly notified about the hearing. A telephone hearing was held on May 22, 2017. The claimant participated. The employer participated through Confidential Secretary Michelle Koelling. No exhibits were offered or received.

**ISSUES:**

Did the claimant voluntarily leave the employment with good cause attributable to the employer or did the employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived?

Can charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired on August 23, 2016 as a part-time Cashier earning \$13.59 an hour with no benefits. She was promoted into a full-time Secondary Cook/Assistant Manager position earning \$14.54 an hour and was entitled to benefits. The claimant's last day worked was December 21, 2016, as that was the last day before winter break.

While on break, the claimant slipped on ice and injured herself. She was required to go through multiple surgeries and her doctor restricted her to no work while she was healing. The claimant

and her doctor kept the employer updated on her status. On May 8, 2017, the claimant's doctor released her to return to work. The claimant notified the employer she was available for work.

On May 15, 2017, the employer's human resources employee Diana notified the claimant that she could not return to her position as it had been filled. Diana offered the claimant a position as a substitute, filling in at different schools when needed. The hours were not guaranteed and would not have encompassed full-time hours, the claimant would lose her benefits, and she could fill in for one of three positions with hourly rates ranging from \$11.79 an hour to \$14.54 an hour. Diana told the claimant she could accept this position or quit. The claimant did not accept the position as she needed the hours and benefits included in the full-time employment.

The administrative record reflects that the claimant has received unemployment benefits in the amount of \$918.00, since filing a claim with an effective date of April 2, 2017, for the three weeks ending May 20, 2017. The administrative record also establishes that the employer did participate in the fact-finding interview.

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

For the reasons that follow, the administrative law judge concludes no work was available to the claimant upon her release to return to work from a non-work related injury. Benefits are allowed.

Iowa Code § 96.5(1)d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.26 provides, in relevant part:

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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

...

(6) Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

The claimant's return to the employer to offer services after the medical recovery evinces an intention to continue working. The claimant's regular position was not available as it had been filled by another employee. The employer did not have a comparable position available to the claimant. The employer offered the claimant a part-time, as needed position, with no benefits and no guaranteed hourly wage, when she had been in a full-time position with guaranteed hours, at the highest pay rate, and with benefits prior to her injury. Therefore, the separation was attributable to a lack of work by the employer. Even if the claimant was deemed to have quit her job, she had a good cause reason due to the significant change in her contract of hire. Benefits are allowed.

As benefits are allowed, the issue of overpayment is moot and the charges to the employer's account cannot be waived.

**DECISION:**

The April 25, 2017, reference 03, decision is affirmed. The claimant was laid off due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible. The issue of overpayment is moot and the charges to the employer's account cannot be waived.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

src/scn