

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**VICTORIA L APALA CUEVAS**  
Claimant

**APPEAL NO. 11A-UI-12945-VS**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COMMUNITY CARE INC**  
Employer

**OC: 08/28/11**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct  
871 IAC 24.22(2)j(1)(2) – Leave of Absence

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated September 28, 2011, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on February 8, 2012, in Davenport, Iowa. The claimant participated. The employer participated by Michael DeMouly, human resources director; Allie Cinadr, supported community living manager; and Theresa Cali, human resources generalist. The record consists of the testimony of Theresa Cali; the testimony of Allie Cinadr; the testimony of Michael DeMouly; the testimony of Victoria Apala Cuevas; Claimant's Exhibits A through G; and Employer's Exhibits 1 through 14. This case was heard in conjunction with 11A-UI-12946-VS.

**ISSUE:**

Whether the claimant was placed on disciplinary suspension for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer provides services for mentally challenged individuals. The claimant was hired on March 19, 2007, as a direct support professional.

The claimant requested a personal leave of absence from August 9, 2011, through August 23, 2011. The employer granted this leave of absence. The claimant was also informed that she could return to work only when she presented a full doctor's release and passed a fitness of duty test with the employer's doctor. (Exhibit D)

The claimant's physician permitted the claimant to return to work on August 23, 2011, provided she wore a shoe with an open toe on her right foot. This is contrary to the employer's policies, which require an employee to wear shoes with covered toes. The claimant was sent to the company physician, Dr. Rick Garrels, who allowed the claimant to return to work with the same

restriction effective August 26, 2011. The employer decided to make the accommodation and the claimant was returned to work on September 8, 2011.

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

871 IAC 24.22(2)j(1)(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

In this case, the representative ruled that the claimant was placed on disciplinary suspension on August 9, 2011. This is incorrect. The claimant requested a leave of absence, which was granted by the employer. The leave of absence was initially granted through August 23, 2011. The claimant's return to work was delayed because she needed to pass a fitness for duty test. The claimant was permitted to return to work on August 26, 2011, by the employer's doctor. The claimant was not put back on the schedule, however, until September 8, 2011.

The claimant established her claim for benefits on August 28, 2011. The claimant is eligible for benefits from August 28, 2011, through September 7, 2011. She is eligible because her leave ended and she was able and available to return to work. The claimant was unemployed because the employer did not put her back on the schedule until September 8, 2011.

**DECISION:**

The representative's decision dated September 28, 2011, reference 01, is reversed. The claimant is eligible for unemployment insurance benefits from August 28, 2011, through September 7, 2011, provided she meets all other eligibility requirements.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/kjw