

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HANNAH M BENTROTT
Claimant

APPEAL NO: 10A-UI-00699-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KRYSILIS INC
Employer

OC: 12/06/09
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 a representative's January 7, 2010 decision (reference 01) that concluded she was not qualified to receive benefits, and the employer's account was exempt from charge because she had voluntarily quit her employment for reasons that do not qualify her to receive benefits. A telephone hearing was held on February 23, 2010. The claimant participated in the hearing. Deb Terrones, an area administrator, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits or did the employer discharge her for work-connected misconduct?

Is the claimant able to and available for work as of December 6, 2009?

FINDINGS OF FACT:

The claimant started working for the employer in January 2009. The claimant worked as a full-time direct support staff employee. At the time of hire, the employer informed the claimant her job required her to lift 40 pounds.

The claimant hurt her back and she has not been at work since the first week of August 2009. The claimant filed a workers' compensation claim, but it was denied. The claimant did not receive any workers' compensation benefits but has currently hired an attorney to pursue this claim.

After early August but before the claimant had back surgery on October 26, 2009, her physician released her to work with a ten-pound weight restriction. The claimant contacted the employer when she had this work restriction. The employer does not have any light-duty work and told the claimant she would not be scheduled to work until she was released to work and could lift at least 40 pounds.

After the claimant's back surgery in late October, she was released to work with a 25-pound weight restriction in early December 2009. The 25-pound weight is currently a permanent weight restriction. Again the claimant contacted the employer about working, but until the claimant can lift 40 pound, the employer does not have any work for her. The claimant remains on the employer's payroll records but she has not performed any work or been scheduled to work since she injured her back in early August 2009.

The claimant established a claim for benefits during the week of December 6, 2009. The claimant is currently looking for office work or work that does not require lifting. The claimant has office work experience.

REASONING AND CONCLUSIONS OF LAW:

As of December 6, 2009, when the claimant was released to work, but has a permanent 25-pound weight restriction, her employment with the employer is over because she is unable to lift the 40 pounds that her job requires her to lift. Since the claimant was released to work in December with the permanent weight restrictions, she is no longer on a leave of absence. Although the claimant asked to return to work, the employer has not scheduled her to work because of her permanent weight restrictions. For unemployment insurance purposes, the claimant's employment has been terminated. Keeping the claimant's name on the payroll does not change the fact the claimant has not been scheduled to work after she was released to work in December 2009.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a). Since the claimant is pursuing her workers' compensation claim the outcome of this issue is not known. What is known is that the employer will not schedule the claimant to work with her permanent 25-pound weight restriction. For unemployment insurance purpose, the claimant's employment has ended because she is unable to meet the conditions of the job. The claimant is currently unemployed with the employer because she is unable to lift 40 pounds. The claimant's unemployed status is not the result of work-connected misconduct. Therefore, as of December 6, 2009, the claimant is qualified to receive benefits.

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code section 96.4-3. As long as a claimant is looking for meaningful work, she is not required to look for the same type of work she had been doing for the employer. The claimant's permanent lifting restriction does not limit her to a tailored-made job. The claimant established that she is able to and available for work.

DECISION:

The representative's January 7, 2010 decision (reference 01) is reversed. The claimant did not voluntarily quit her employment. Instead, the employer has not scheduled her to work because she has permanent weight restriction of 25 pounds, which makes her unable to meet the conditions of her job. Since the employer is unable to schedule the claimant with her permanent weight restrictions, for unemployment purposes the employer ended the claimant's employment for reasons that do not constitute work-connected misconduct. The claimant established that even with her 25-pound weight restriction she is able to and available for work. Therefore, as of December 6, 2009, the claimant is qualified to receive benefits.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs