IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

CATHY MC AULEY
Claimant

COMPREHENSIVE SYSTEMS INC
Employer

APPEAL NO. 10A-UI-08276-SWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/02/10
Claimant: Appellant (4)

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Quit
Section 96.4-3 – Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 4, 2010, reference 01, that concluded she was not able to and available for work. A telephone hearing was held on July 27, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Lucas Taylor. Sheryl Heyenga participated in the hearing on behalf of the employer with a witness, Mary Amsbaugh.

ISSUES:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

Was the claimant discharged for work-connected misconduct?

Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant worked for the employer as a direct support staff member from February 19, 2007, to April 30, 2010. The job involved providing direct support to developmentally disabled adults, which included instruction on independent living skills, preparing meals, cleaning, shopping, keeping track of finances, and accompanying the consumer on outings. In the job description, the physical requirements included being physically capable of assisting consumers and safely lifting at a minimum of 60 pounds from floor to waist level. The job description required a pre-employment physical and a physical every three years. The claimant was able to lift 60 pounds during the physical on February 9, 2007. The only reason for the 60-pound lifting requirement would be to assist a customer in case of a medical emergency. There was no substantial lifting involved in the daily duties of the job, the claimant had no problems performing any of the work, and never had to deal with a medical emergency that involved lifting.

In April 2010, a supervisor, Pamela Shackleton, notified the claimant that she was due for her three-year physical. The claimant said she knew she needed the physical, but she did not

believe she could perform the lift test because of hip problems, for which she was being treated by a nurse practitioner. She said she planned to get an excuse so she would not have to do the lift test. Shackleton told her that she did not think the lift test was part of the physical. The claimant agreed to make an appointment for the physical.

The supervisor checked with the program manager, Mary Amsbaugh, who in turn spoke to the personnel director, Mike Franke. Franke said since the claimant had brought up the problem with lifting, she would have to take and pass the lift test and could not work for the employer with lifting restrictions, based on the employer's policy that light-duty work cannot be offered to employees with non-work-related injuries.

On May 4, the claimant spoke with Shackleton and Amsbaugh. Amsbaugh informed her that she would have to pass the lifting test to keep working for the employer. When the claimant replied that she was going to get a medical excuse from doing the lift test, Amsbaugh responded that she would have to be restriction free to work for the employer. The claimant asked if that meant that her employment with the employer was done. Amsbaugh responded that she needed to take and pass the lift test.

After consulting with Franke again, Amsbaugh called the claimant again and notified her that she was off the schedule until she had her physical and passed the lift test. The claimant insisted that she would work until the date of her physical on May 11 and would get a restriction from her doctor so she would not have to take the lifting test. Amsbaugh told her she could not work with a restriction.

After the conservation with Amsbaugh where she was taken off the schedule pending the appointment to have a physical and lifting test, the claimant filed a claim for unemployment insurance benefits effective May 2, 2010.

The claimant did not attend the scheduled physical on May 11. She did to go to a medical practitioner and get a statement that would excuse her from taking the lift test. She did not notify the employer that she was not going to the medical appointment. She did not at that time have any restriction from a medical practitioner as to the weight she could lift.

Around May 7, the claimant drove her daughter from Iowa to California to obtain treatment from the daughter's doctor. She did to return to Iowa until May 15.

When Amsbaugh found out on May 12 that the claimant had failed to attend her appointment for a physical and lifting test and could not reach her by phone, she wrote a letter to the claimant. In the letter, she informed the claimant that she needed to contact Amsbaugh on May 21, 2010, about rescheduling the physical and lift test. She was informed that failure to contact Amsbaugh by 4:30 p.m. on May 21 meant that she desired to end her employment with the employer.

The claimant received the letter on May 15 when she returned from California, but she did not read it for a couple of days. After reading the letter, the claimant did not contact Amsbaugh or any other manager because she had been taken off the scheduled, which she deemed a termination of her employment. The claimant got a medical restriction limiting her to lifting no more than 40 pounds on July 8, 2010.

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.

On May 4, when Amsbaugh informed the claimant that she was being taken off the schedule pending the appointment to have a physical and lifting test done, the claimant had a separation from work. This separation was not a voluntarily quit employment or a discharge for work-connected misconduct. The employer took the claimant off work because she expressed concern that she was not able to lift 60 pounds, which was a known physical requirement of the job. The claimant is qualified to receive unemployment insurance benefits as of the effective date of her claim May 2, if she is otherwise eligible, based on this separation from work.

There is a difference, however, between a separation from work and a termination from employment. Taking the claimant off the schedule until she had her physical and lift test on May 11, where both are required under the employer's policies does not mean the claimant was discharged.

Instead of doing what said she was going to do—see a doctor to get a lifting restriction to present to the person conducting the physical, which would have been a reasonable course of action—the claimant did nothing based on an unreasonable belief that the employer had already discharged her. If she couldn't attend the scheduled appointment because of her daughter's condition, she should have contacted the employer to reschedule the appointment. Her resistance to even trying the lifting test and her desire to be excused from doing the test are puzzling. The test, conducted by an occupational health professional, determines a person's weight restrictions. The test might be hard, but the occupational health professional is not going to have a person do something that will result in an injury.

Even after the claimant missed her appointment on May 11 without any notice to the employer, the employer did not discharge the claimant for her failure to comply with the employer's instructions, but instead it gave her another chance to reschedule the appointment. The letter notified her that her failure to contact the employer by May 21 would indicate she desired to end her employment. Again, the claimant had no contact with the employer.

The claimant failure to attend the appointment on May 11 (or reschedule it if necessary due to her daughter's condition) and her failure to contact the employer by May 21 to reschedule the appointment amounts to a voluntarily quit of employment without good cause attributable to the employer. This means she would be disqualified effective May 9, 2010.

The Agency based its disqualification on the claimant being unable to work in her usual occupation. This decision is wrong because the unemployment insurance rules specially provide that a person must be physically able to work, not necessarily in the individual's usual 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, just not work that requires heavy lifting.

Finally, even though I have ruled that the claimant is disqualified effective May 9, 2010, she is also disqualified from May 9 to 15 because she was unavailable to work due to traveling to California.

DECISION:

The unemployment insurance decision dated June 4, 2010, reference 01, is modified in favor of the claimant. The claimant is eligible for one week of benefits for the week of May 2 – 8, 2010, due to the employer taking her off the schedule. Effective May 9, 2010, she is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Steven A. Wise
Administrative Law Judge

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Decision Dated and Mailed

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