

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**REBECCA L GIBERSON**  
Claimant

**APPEAL NO: 10A-UI-12604-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CENTER VILLAGE INC**  
Employer

**OC: 08/01/10  
Claimant: Appellant (2)**

Section 96.1-d – Voluntary Quit/Non-Job Related Injury  
Section 96.5-2-a – Discharge  
Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated August 31, 2010, reference 01, that held she voluntarily quit work due to a non-job related illness or injury on February 9, 2010, and benefits are denied. A telephone hearing was held on November 1, 2010. The claimant, her husband, William, and daughter, Sarah Zimmer, participated. Cathy Newman, Administrator, participated for the employer. Claimant Exhibit A was received as evidence. Official notice was taken of claimant appeal documents.

**ISSUES:**

Whether claimant is voluntarily quit with good cause attributable to the employer.

Whether claimant was discharged for misconduct.

Whether claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began work as a full-time dietary employee on July 9, 2009, and last worked for the employer as a full-time C.N.A on February 9, 2010. The claimant suffered a non-job-related injury in a fall at her home on January 27, 2010. The claimant notified the employer and provided medical documentation she would be off work.

The claimant returned to work on February 8 and 9, but her knee swelled and she went back to her doctor for further treatment. The doctor recommended she be off work. The claimant called for a floor supervisor on February 17 and spoke to a social worker. The worker became upset the claimant would not be able to return to work. The employer is a smaller business operation and it needs everyone to be at work.

When claimant did not receive a call from the facility administrator, she called on February 19. The claimant advised she would be off work for a period of time, and she understood the need for the employer to fill her position in her absence. The employer received a doctor's note on February 22 that confirmed claimant could not work at that time.

On March 8, the claimant met with the facility administrator to seek her assistance in claimant's application for private disability insurance. Claimant learned she had been terminated effective February 26, and her health insurance had been canceled March 1. Claimant received an unrestricted release to return to work for April 5, 2010.

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

Iowa Code section 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 Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The administrative law judge concludes that the claimant voluntarily left employment due to a non-job-related injury upon the advice of her physician with notice to her employer on February 9, 2010. The employer's decision to replace claimant and terminate her employment on February 26, 2010, is for no act of misconduct in connection with employment.

The employer contends the claimant called on February 19 and terminated her employment. All of the subsequent claimant actions, communications and doctor's notes do not support it. The claimant statement she would step aside to allow her employer to replace her is not a resignation. The employer was motivated to replace claimant and replace her because it knew she might be gone for an extended period. Since the employer has a small workforce, it was more concerned with the work coverage issue than keeping claimant as an employee.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge further concludes the claimant is able and available to work effective April 5, 2010. The claimant was issued an unrestricted work release by her physician.

**DECISION:**

The department decision dated August 31, 2010, reference 01, reversed. The claimant voluntarily left employment due to a non-job-related injury on February 9, 2010. The employer discharged the claimant on February 26, 2010, for no act of misconduct. The claimant became able and available for work effective April 5, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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