

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRENDA A WALLACE
Claimant

APPEAL NO. 13A-UI-09437-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA JEWISH SENIOR LIFE CENTER
Employer

OC: 07/14/13
Claimant: Appellant (2-R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated August 6, 2013, reference 01, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on September 19, 2013. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Tyra Stull participated in the hearing on behalf of the employer with a witness, Nikki Harding. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show the claimant was determined able to and available for work in a decision dated August 16, 2013, reference 04. If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a certified nursing assistant in the employer's long-term care facility from May 13, 2013, to July 15, 2013.

The employer discharged the claimant after she brought in a doctor's statements stating that she was permanently limited to lifting no more than 40 pounds. The claimant's job description required her to lift at least 50 pounds, and since certified nursing assistants are required to assist in transferring residents or lifting residents who may have fallen, the employer was unable to accommodate the 40-pound weight restriction.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

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. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992). The employer discharged the claimant; the claimant never indicated she intended to quit.

In Wills, 447 N.W.2d at 138, the Iowa Supreme Court considered the case of a pregnant certified nursing assistant who went to her employer with a physician's release that limited her to lifting no more than 25 pounds. Wills filed a claim for benefits because the employer would not let her return to work because of its policy of never providing light-duty work. The court ruled that Wills became unemployed involuntarily and was able to work because the weight restriction did not preclude her from performing other jobs available in the labor market. Id. at 138.

Similar, the claimant's discharge because she was unable to lift over 40 pounds is not disqualifying. No misconduct has been alleged or proven.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, its account may be chargeable for benefits paid to the claimant based on this separation from employment.

The issue of whether the claimant was able to and available for work was listed on the hearing notice but was already decided in a decision dated August 16, 2013.

DECISION:

The unemployment insurance decision dated August 6, 2013, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits based on the reasons for her separation, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css