

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEPHANIE M TRASK**  
Claimant

**APPEAL NO: 14A-UI-00359-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BIOLIFE PLASMA LLC**  
Employer

**OC: 01/20/13**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge  
Section 96.5-1 – Voluntary Leaving  
Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Stephanie M. Trask (claimant) appealed a representative's January 3, 2014 decision (reference 04) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Biolife Plasma, L.L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 3, 2014. The claimant participated in the hearing. The employer's third party representative received the hearing notice and responded by accessing the Appeals Section conference call system on January 29, 2014. The representative indicated that Krista Johanson would be available at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge called that number at the scheduled time for the hearing, Ms. Johanson was not available; therefore, the employer did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct? Is the claimant eligible for unemployment insurance benefits by being able and available for work?

**FINDINGS OF FACT:**

The claimant started working for the employer on March 4, 2013. She worked full time as a plasma center technician on a rotating schedule. Her last day of work was December 13, 2013. On that date the employer gave the claimant a choice to either quit or be discharged. The reason for this ultimatum was that the claimant, who had previously been diagnosed with epilepsy, had suffered a couple seizures at work, resulting in brief quasi-blackouts. The employer was concerned about the claimant's and patient's safety.

The claimant does not have any medical restrictions imposed upon her, and she is seeking full-time employment.

## REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993). The claimant did not have the intent to sever the employment relationship necessary to treat the separation as a "voluntary quit" for unemployment insurance purposes; she did not have the option to continue her employment; she could either quit or be discharged. 871 IAC 24.26(21). As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance. *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992).

The next issue in this case is then whether the employer effectively discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason the employer effectively discharged the claimant was because of a reasonable concern for the claimant's and patient's safety in the event the claimant suffered further seizures. However, the claimant's actions that led to the loss of her job were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3. To be found able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); 871 IAC 24.22(1). A claimant must remain available for work on the same basis as when her base period wages were accrued. 871 IAC 24.22(2)f.

The claimant has demonstrated that she is able to work in some gainful employment. Benefits are allowed, if the claimant is otherwise eligible.

**DECISION:**

The representative's January 3, 2014 decision (reference 04) is reversed. The claimant did not voluntarily quit and the employer did effectively discharge the claimant but not for disqualifying reasons. The claimant is currently able to work and available for work. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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