

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER L HARMSEN
Claimant

APPEAL NO. 07A-UI-09493-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COVENANT MEDICAL CENTER
Employer

**OC: 09/02/07 R: 03
Claimant: Appellant (2)**

Section 96.5(1)d – Separation Due to Illness/Injury

STATEMENT OF THE CASE:

Jennifer Harmsen filed an appeal from a representative's decision dated October 4, 2007, reference 01, which denied benefits based on her separation from Covenant Medical Center. After due notice was issued, a hearing was held by telephone on October 23, 2007. Ms. Harmsen participated personally and was represented by Terra Wood, Attorney at Law. Exhibits A through F were admitted on Ms. Harmsen's behalf. The employer participated by Keith Strand, Human Resources Representative. Exhibits One and Two were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Harmsen was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Harmsen began working for Covenant Medical Center on November 14, 2005 and last performed services on May 8, 2007. She worked full time in housekeeping. In January of 2007, she slipped and fell into a whirlpool bath while cleaning. Although she was sore from the fall, Ms. Harmsen did not require medical attention at that time.

In March, Ms. Harmsen began having problems with her back. She saw a doctor and was given work restrictions. The employer accommodated the restrictions. She filed a workers' compensation claim, but the employer's carrier denied that her condition was work-related. The matter is currently pending with the Industrial Commissioner. Ms. Harmsen left on May 8 in order to undergo surgery for a fractured vertebrae. She was released to return to work in August with certain restrictions. The employer was notified of the restrictions. In a letter dated August 7, the employer advised Ms. Harmsen that the restrictions could not be accommodated. She believed the employer was continuing to seek a suitable placement for her. When she had not been offered further work, she filed a claim for job insurance benefits effective September 2, 2007.

REASONING AND CONCLUSIONS OF LAW:

Ms. Harmsen left her employment with Covenant on May 8 because of the need to undergo back surgery. She notified the employer of the need to be absent and re-offered her services once she was released by her doctor to return to work in August. The employer did not return her to work in August because her restrictions prevented her from performing her normal job and the employer was unable to accommodate her limitations. The term "recovery" as used in Iowa Code section 96.5(1)d means an individual is able to work without restrictions. Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa 1985). However, where the condition that necessitated the absence is work-related, the individual does not have to have a complete release when she re-offers her services.

The parties dispute whether Ms. Harmsen's condition was work-related. The employer did not refute her testimony that she fell at work in January. Given the type of work she performed in housekeeping, it is entirely possible that the incident in January was exacerbated by continued work. The employer presented no evidence to establish that the medical condition which necessitated Ms. Harmsen's restrictions was not work-related. The administrative law judge resolves any doubt in Ms. Harmsen's favor.

Ms. Harmsen returned and re-offered her services to the employer after being released by her doctor but no suitable, comparable work was made available to her. Therefore, pursuant to section 96.5(1)d, benefits are allowed.

DECISION:

The representative's decision dated October 4, 2007, reference 01, is hereby reversed. Ms. Harmsen was separated from Covenant for no disqualifying reason. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw