

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

ALISSA J TWEED  
804 CLOVER CT APT 5  
NORTHWOOD IA 50459

ABCM CORPORATION  
PO BOX 436  
HAMPTON IA 50441-0436

Appeal Number: 04A-UI-02494-B4T  
OC: 02-01-04 R: 02  
Claimant: Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4-3 – Availability for Work

STATEMENT OF THE CASE:

Alissa J. Tweed appealed from an unemployment insurance decision dated March 1, 2004, reference 01, that held, in effect, the claimant was not eligible to receive unemployment insurance benefits because the records indicate she was not able to work because of pregnancy. Benefits were denied effective February 1, 2004.

A telephone conference hearing was scheduled and held on March 25, 2004, pursuant to due notice. Alissa J. Tweed participated. Elaine Helgeson, Administrator, participated on behalf of ABCM Corporation.

Official notice was taken of the unemployment insurance decision, bearing reference 01, together with the pages attached thereto (7 pages in all). Claimant's Exhibit A and Employer's Exhibit 1 were admitted into evidence.

#### FINDINGS OF FACT:

The administrative law judge, having examined the entire record in this matter, finds that: Alissa J. Tweed was employed as a certified nurse's aid on June 1, 2002 with ABCM Corporation. On January 12, 2004, the claimant held a conversation with Elaine Helgeson, Administrator, and Stacey Holstad, Director of Nursing. The claimant provided a copy of a doctor's statement shown by page 2 of Exhibit 1 admitted into evidence. The claimant was restricted from lifting in excess of 20 pounds until after pregnancy. The claimant's options were provided and she chose to accept family medical leave which would provide her with eight weeks of leave from January 12, 2004 through March 9, 2004 at her regular wage rate. Subsequently, a family and medical leave act form was mailed to the claimant. The leave of absence was to end on March 9, 2004.

The claimant has not returned to the employer and offered to perform work as a CNA but decided to wait until after the child was born. In addition, the claimant stated clearly that she was unable to perform the job duties of a CNA irrespective of the weight lifting restriction.

#### REASONING AND CONCLUSIONS OF LAW:

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".

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.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such 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. On the other hand 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Code Section 96.5-1 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.

The evidence in the record does not establish that the claimant was separated from her employment for a disqualifiable reason within the intent and meaning of Section 96.5-2-a and/or 96.5-1.

The claimant clearly chose to accept a family medical leave of absence for a period of time commencing January 12, 2004 through March 9, 2004. The claimant was paid wages throughout the medical leave of absence and has not chosen to return to the employer and ask for additional employment. The claimant has not been released to return to work by a physician and clearly stated that she was unable to perform the job duties of a certified nurse's aid until after the birth of her child.

Under such circumstances, Alissa J. Tweed is deemed unavailable for work within the intent and meaning of Iowa Code Section 96.4-3.

DECISION:

The unemployment insurance decision dated March 1, 2004, reference 01, is affirmed. Alissa J. Tweed is found unavailable for work within the intent and meaning of Iowa Code Section 96.4-3 and ineligible for benefits until such time as she submits proof that her physician has approved her return to work.

tjc/kjf