

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TINA M CAMPBELL**  
Claimant

**APPEAL NO: 12A-UI-12495-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GENESIS DEVELOPMENT**  
Employer

**OC: 09/09/12**  
**Claimant: Respondent (4-R)**

Section 96.5-2-a – Discharge  
Section 96.4-3 – Able and Available  
871 IAC 24.23(1) – Unable to Perform Work/Illness

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated October 12, 2012, reference 01, that held the claimant left work due to illness on March 15, 2012, but after recovering from it was not returned to work. Benefits are allowed. A telephone hearing was held on November 14, 2012. The claimant participated. Kathy Lonergan-Beaman, Group Living Coordinator, and Jennifer Ellis, Site- Supervisor, participated for the employer. Employer Exhibits 1 & 2 were received as evidence.

**ISSUES:**

Whether the claimant was discharged for misconduct in connection with employment.

Whether claimant is able and available for work.

Whether claimant is overpaid unemployment benefits.

**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 employment on May 8, 2009, and last worked for the employer as a full-time community support specialist on February 20, 2012. She has suffered from a variety of non-job-related mental and physical health issues and had used substantial FMLA during the course of employment.

She saw Dr. Vander Meide of the Boone Family Practice on February 20 and she provided a letter to the employer with his recommendations. He opined claimant is not able to continue working due to multiple serious medical conditions that are likely permanent and progressive. He recommended she apply for disability.

After the employer review of the matter, it sent claimant a February 27 letter stating her FMLA would expire on March 15 and because she could not return to work her employment would be

terminated. Claimant did not resign. When she was unable to return to work by March 15, she was terminated.

Claimant has a history of rheumatoid arthritis, herniated disc, and gastric bypass that was exacerbated by mental health issues related to personal family tragedy. She was released from mental hospitalization in July or August and is currently treated with Prozac. Although she had applied for SSI (disability), it was not approved and she believes that her application has been withdrawn. Due to medication/treatment change(s), claimant believes she is now capable of working. Claimant has been receiving or credited with unemployment benefits on her claim.

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

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.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on March 15, 2012.

The employer terminated claimant's employment when her FMLA expired and it reasonably believed she could no longer return to work due to serious medical conditions. While this employment termination might be for good cause it does not constitute job disqualifying misconduct.

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".

871 IAC 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

The administrative law judge further concludes claimant does not meet the availability requirements of the law effective September 9, 2012 due to serious health conditions.

The claimant did not provide a medical release from her treating doctor Vander Meide that she is able to perform some gainful employment given her current mental and physical health conditions.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Since claimant has been receiving benefits on her claim prior to this determination, the overpayment issue is remanded to claims for a decision.

**DECISION:**

The department decision dated October 12, 2012, reference 01, is modified. The claimant was not discharged for misconduct on March 15, 2012. Claimant does not meet the availability requirements of the law effective September 9, 2012. Benefits are denied. The overpayment issue is remanded.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs