

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ELIZABETH A WILT**  
Claimant

**CARMELITE SISTERS FOR THE AGED**  
Employer

**APPEAL 15A-UI-06765-CL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/24/15**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 10, 2015, (reference 01) unemployment insurance decision that denied benefits based upon a voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on July 14, 2015. Claimant participated. Employer participated through Human Resources Director Laura Williams. Claimant's Exhibits A through B were received.

**ISSUES:**

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a Certified Nursing Assistant (CNA) from January 19, 2015, and was separated from employment on May 22, 2015, when she was terminated.

Claimant suffered a non-work related injury on April 17, 2015. On May 7, 2015, claimant brought a doctor's note to Human Resources Director Laura Williams stating she was restricted to light duty and had a 10-pound lifting restriction until May 26, 2015. Employer requires its CNAs to be able to lift 50 pounds. Williams asked claimant to undergo an MRI to confirm the injury. On May 22, 2015, claimant informed Williams of the MRI test results which confirmed the injury. Williams terminated claimant's employment. At the time of her termination, employer had no open positions for which claimant was qualified and physically able to perform.

At the time of the hearing, claimant continued to be subject to the 10-pound lifting restriction. However, claimant is able and available for and seeking a position performing office work.

## REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether claimant's separation from employment took place under disqualifying conditions. It did not.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

In this matter, the evidence establishes that claimant did not voluntarily quit her employment, but that she was terminated by employer. Employer could not return her to her position and employer had no positions available for her that would meet her restrictions. Claimant was not terminated for disqualifying misconduct.

The second issue is whether claimant was able and available for work within the meaning of the Employment Security Law.

Iowa Code § 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 Admin. Code r. 871-24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An 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.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.23(35) provides:

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

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

Although claimant cannot perform work as a CNA at this time, claimant is able and available for and seeking a position performing office work.

**DECISION:**

The June 10, 2015, (reference 01) unemployment insurance decision is reversed. Claimant was discharged for no disqualifying misconduct. Claimant is able and available for work. Benefits are allowed, provided claimant is otherwise eligible.

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Christine A. Louis  
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Decision Dated and Mailed

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