

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DENISE L POTTERFIELD**  
Claimant

**APPEAL NO. 10A-UI-05134-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LUTHERAN SERVICES IN IOWA INC**  
Employer

**OC: 02/28/10**  
**Claimant: Appellant (4)**

Section 96.5(2)a – Discharge  
Section 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant, Denise Potterfield, filed an appeal from a decision dated March 25, 2010, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on May 18, 2010. The claimant participated on her own behalf. The employer, Lutheran Services, participated by Program Supervisor Vickie Pals.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits and whether the claimant is able and available for work.

**FINDINGS OF FACT:**

Denise Potterfield was employed by Lutheran Services from February 4, 2002 until June 11, 2009 as a full-time case worker. She went on FMLA in 2009 and it ended June 11, 2009. She was notified she was discharged by Program Supervisor Vickie Pals by phone. The decision was made based on company policy which does not hold an employee's job after the 12 weeks of FMLA ended.

Ms. Potterfield currently remains under the care of her physician and has not been released to return to work.

**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 claimant was discharged because she was not able to return to work after her 12 weeks of FMLA expired. This is not willful and deliberate misconduct and disqualification may not be imposed.

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 claimant is still under the care of her doctor and continues with her treatment. The doctor has not released her to return to work. Under the provisions of the above Administrative Code section, she is not able and available for work.

**DECISION:**

The representative's decision of March 25, 2010, reference 01, is modified in favor of the appellant. Denise Potterfield is not disqualified as she was discharged but not for misconduct. The claimant is ineligible for unemployment benefits as she is not able and available for work due to illness and being under her doctor's care.

If the claimant is released to return to work by her doctor, documentation of that release should be provided immediately to her local Workforce Center.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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