

**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**

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**Appeal Number: 06A-UI-06571-LT
OC: 05-21-06 R: 02
Claimant: Appellant (2R)**

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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Iowa Code § 96.5(1)d – Voluntary Leaving/Illness or Injury

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the June 21, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 26, 2006. Claimant participated and was represented by Jeff Lipman, Attorney at Law. Employer participated through Patty Wachtendorf. The issue is whether claimant quit the employment without good cause attributable to the employer or whether she was discharged for reasons related to job misconduct. The administrative law judge took judicial notice of the administrative record.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time correctional officer through May 5, 2006 when she was discharged. Claimant had an injury causing migraine headaches in the Army in 1997 when she was involved

in a humvee accident. In 2005 she was diagnosed with non-work related spinal stenosis. She was given initial work restrictions within the past year and employer accommodated those restrictions. On April 28, 2006, the work restrictions were reduced and made permanent. Employer declined to accommodate those restrictions and sent claimant home unless she were released to full work duties.

Claimant filed a grievance and it was resolved in her favor. She returns to work July 27, 2006 and will receive back pay from May 5 through July 26, 2006 based upon an average of 26 hours per week she worked in the last year of employment excluding unpaid time. The application of the back pay award has not yet been calculated as it applies to her unemployment insurance benefits. This figure is based upon a pay rate of \$19.38 per hour.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not quit but was effectively discharged from employment for no disqualifying reason.

Iowa Code § 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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

Since claimant returned and offered to continue working as she had but was not allowed to do so in spite of employer's previous accommodation of the non-work related medical condition, she did not quit but was discharged. The issue remaining is whether claimant was discharged for reasons related to job misconduct. The administrative law judge concludes she was 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.

871 IAC 24.32(7) provides:

- (7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Since employer involuntarily ended the employment upon receipt of permanent work restrictions for a non-work related medical condition, which it had previously accommodated, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

DECISION:

The June 21, 2006, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

REMAND:

The issue of back pay application to partial benefit entitlement and any related benefit overpayment delineated in the findings of fact is remanded to Iowa Workforce Development Claims Section for an initial investigation and determination with notice to both parties.

dml/pjs