

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RHONDA K HOLLAND**  
Claimant

**APPEAL NO. 12A-UI-08023-VST**

**SIMPSON MEMORIAL HOME INC**  
Employer

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/26/12**  
**Claimant: Respondent (1)**

Section 96.5-1 – Voluntary Quit  
Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed an appeal from a decision of a representative dated June 27, 2012, reference 02, which held that the claimant was eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 25, 2012. Claimant participated. The employer participated by Chad Thomas, legal counsel, and Tracey Sulzberger, RN coordinator. The record consists of the testimony of Chad Thomas; the testimony of Tracey Sulzberger; the testimony of Rhonda Holland; Claimant's Exhibit A; and Employer's Exhibits 1-15.

**ISSUE:**

Whether the claimant was separated from her employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a nonprofit continuing care community. The claimant worked at the Leland Smith assisted living facility in Wilton, Iowa. The claimant was hired on July 6, 2010. She was a part-time licensed practical nurse. The claimant's last day of actual work was January 24, 2012. She was separated from her employment on April 23, 2012.

The claimant began Family Medical Leave Act (FMLA) leave on January 27, 2012. She had surgery on her left wrist for non-work related carpal tunnel syndrome. The claimant's physician permitted to her return to work on February 9, 2012. A dispute between the claimant and the employer developed over the claimant's return to work. The claimant's physician wanted her to return to work as tolerated but the employer apparently wanted the claimant to return to work without restrictions. The claimant's physician wanted a list of essential work functions, something that the employer would not provide. The claimant's physician then placed a five-pound limitation, which the employer would not accommodate.

The claimant's FMLA leave expired on April 23, 2012. The claimant did not return to work. There still had been no resolution of the claimant's work status and limitations, if any. The employer separated the claimant since she did not return to work. The claimant did not quit her job and wanted to return to work.

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

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). Where an employee did not voluntarily quit but was terminated while absent under medical care, the employee is allowed benefits and is not required to return to the employer and offer services pursuant to the subsection d exception of Iowa Code section 96.5(1). *Prairie Ridge Addiction Treatment Svcs. v. Jackson and EAB*, \_\_\_ N.W.2d \_\_\_, No. 11-0784 (Iowa Ct. App. Jan. 19, 2012). Disqualification from benefits pursuant to Iowa Code section 96.5(1) requires a finding that the quit was voluntary. *Geiken v. Lutheran Home for the Aged Ass'n*, 468 N.W.2d 223, 226 (Iowa 1991). A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. EAB*, 447 N.W. 2d 137, 138 (Iowa 1989); see also Iowa Admin. Code r. 871-24.25(35).

The evidence in this case established that it was the employer who initiated the separation of employment. The claimant was, in effect, terminated because she failed to return to work following expiration of her FMLA leave. The claimant did not quit and did not want to quit her job. The employer refused to allow the claimant to return to work unless she produced a satisfactory return to work slip. For reasons that were not entirely clear, the employer was not cooperative in the return to work process. The claimant asked for a list of the essential functions of her job so that she could provide that to her physician, so that he could determine whether she could return to work. The employer did not provide that to the claimant. This stalemate persisted until the time that the claimant's FMLA leave expired. At that point, claimant's employment ended because the employer would not allow her to return to work. This is not a voluntary quit. There is no evidence of misconduct. Benefits are therefore allowed if the claimant is otherwise eligible.

#### **DECISION:**

The decision of the representative dated June 27, 2012, reference 02, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs