

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

JODIE L JENSEN-SCOLES
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Appeal Number: 04A-UI-02004-CT
OC: 01/11/04 R: 03
Claimant: Appellant (2)

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)

Section 96.5(2)a – Discharge for Misconduct
Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Jodie Jensen-Scoles filed an appeal from a representative's decision dated February 18, 2004, reference 01, which denied benefits based on her separation from Allen Memorial Hospital. After due notice was issued, a hearing was held by telephone on March 15, 2004. Ms. Jensen-Scoles participated personally and was represented by Ronald Pepples, Attorney at Law. Exhibits A through F were admitted on Ms. Jensen-Scoles' behalf. The employer participated by Ken Leibold, Director of Human Resources.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Jensen-Scoles began working for Allen Memorial Hospital on October 14, 2002 as a unit coordinator. She became acute care coordinator approximately four months after she began the employment. She had always worked approximately 30 hours each week.

On December 23, 2003, Ms. Jensen-Scoles made application to transfer to a secretarial position in the home health unit. She interviewed with the unit on December 30. The position she initially wanted was filled but she was offered an on-call position as a home health aide. She accepted the position on December 31. After accepting the transfer, Ms. Jensen-Scoles left a note for her supervisor. Her note indicated that she was taking a position in the home health unit and leaving 2East, the location of her work as an acute care coordinator. The note further indicated that she wanted to work a "normal two-week notice." Ms. Jensen-Scoles indicated in her note that she would work until January 16.

During the interview with the home health unit on December 30, Ms. Jensen-Scoles was asked whether there were any problems in her current assignment. She indicated there were none. She was not specifically asked whether she had been disciplined in her current job. In a later conversation with her supervisor, she was advised that she was on probation. She asked the employer what disciplinary actions were in her file and was told that the last disciplinary action was a written warning regarding attendance on August 25, 2003. Once the home health unit learned that Ms. Jensen-Scoles had been disciplined, the home health aide job offer was withdrawn. Because she had already resigned her position as acute care coordinator, Ms. Jensen-Scoles became separated from the employment.

REASONING AND CONCLUSIONS OF LAW:

The threshold issue in this matter is whether Ms. Jensen-Scoles' separation should be considered a quit or a discharge. She had been offered and had accepted a transfer to a position in the home health unit. It was the employer's decision that she would not be allowed to assume that position. Therefore, the separation was initiated by the employer and, as such, is considered a discharge. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer has alleged that Ms. Jensen-Scoles misrepresented her status when she interviewed for the position in home health. The individual who interviewed her did not participate in the hearing. She was only asked if there were any problems in her current position, not if she had ever been disciplined while in that position. Ms. Jensen-Scoles subjectively believed that there were no problems in her job and so indicated to the interviewer. Her response to the question, as the question was posed, was not a misrepresentation. For the above reasons, the administrative law judge concludes that the employer's failure to place Ms. Jensen-Scoles in the home health aide position was not due to any misconduct on her part.

Even if the administrative law judge were to conclude that Ms. Jensen-Scoles quit, there would still be no basis for disqualification from benefits. Her note to her supervisor on December 31 is, in fact, a resignation letter. Although the words "resignation" or "quit" were not used, the essence of the note constitutes a resignation. The note advised the supervisor that she was leaving her current position and that her last day of work would be January 16. The resignation

Ms. Jensen-Scoles submitted was in good-faith reliance on the employer's statements that her transfer request had been approved. She submitted her resignation only after being advised that her request for a transfer had been approved. The employer's actions caused her to submit her resignation but, she was not allowed to assume the position she had been offered. Therefore, her separation as of January 14, 2004 was for cause attributable to the employer.

DECISION:

The representative's decision dated February 18, 2004, reference 01, is hereby reversed. Ms. Jensen-Scoles was separated from employment for no disqualifying reason. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/s