

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

JERI L TREMMEL
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PO BOX 148
NEW SHARON IA 50207

CARE INITIATIVES
c/o JOHNSON AND ASSOCIATES
PO BOX 6007
OMAHA NE 68106-0007

Appeal Number: 04A-UI-06055-HT
OC: 05/02/04 R: 03
Claimant: Respondent (1-R)

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

STATEMENT OF THE CASE:

The employer, Care Initiatives, filed an appeal from a decision dated May 18, 2004, reference 01. The decision allowed benefits to the claimant, Jeri Tremmel. After due notice was issued a hearing was held by telephone conference call on June 23, 2004. The claimant participated on her own behalf. The employer participated by Administrator Linda Spears, Director of Nursing Carol Dillon and was represented by Johnson and Associates in the person of Dawn Fox.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Jeri Tremmel was employed by Care Initiatives from April 28, 2000 until February 4, 2004. She was a full-time certified nursing assistant.

The claimant was on maternity leave with a weight lifting restriction beginning in November 2003. On December 19, 2003, the employer sent her a letter indicating her FMLA would expire February 4, 2004. It further notified her that if she were able to return to work without restrictions before that date her job would be available with no loss of seniority. However, if she were not able to return to work by that date, she would be welcome to reapply for employment once her restrictions had been removed.

Ms. Tremmel was not released to return to work without restrictions by her physician by the time all of her FMLA had been used, and she was laid off for lack of work. She was released on April 29, 2004, but did not return to Care Initiatives to offer her services. However, the employer did contact her regarding employment on or about that date but the claimant refused.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant was released by her employer for lack of work. Ms. Tremmel had used all of her available FMLA but was not released to return to work without restrictions by her physician. As her medical condition was not work related, it was necessary that she be fully released without restrictions under Hedges v. IDJS, 368 N.W.2d (Iowa App. 1985). She was laid off due to not being able to perform the necessary functions of her job. However, this does not constitute misconduct and disqualification may not be imposed.

The issue of whether the claimant refused an offer of available, suitable work has not been adjudicated and should be remanded to the Claims Section for determination.

DECISION:

The representative's decision of May 18, 2004, reference 01, is affirmed. Jeri Tremmel is qualified for benefits provided she is otherwise eligible.

The issue of whether the claimant refused an offer of available, suitable work is remanded to the Claims Section for determination.

bgh/kjf