IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

KRISTI M FLETCHER
Claimant

GOOD SAMARITAN SOCIETY INC
Employer

APPEAL NO. 17A-UI-03800-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/12/17
Claimant: Appellant (2)

Iowa Code Section 96.5(2)(a) – Discharge

STATEMENT OF THE CASE:

Kristi Fletcher filed a timely appeal from the April 3, 2017, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Ms. Fletcher voluntarily quit on March 16, 2017 without good cause attributable to the employer and based on a non-work related medical condition. After due notice was issued, a hearing was held on May 1, 2017. Ms. Fletcher participated. Lori Treangen, Human Resources Manager, represented the employer.

ISSUE:

Whether Ms. Fletcher separated from the employment for a reason that disqualifies her for unemployment insurance benefits or that relieves the employer of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Kristi Fletcher was employed by Good Samaritan Society, Inc. as a full-time Certified Nursing Assistant (CNA) from 2013 and last performed work for the employer on March 14, 2017. Ms. Fletcher's immediate supervisor was, Marsha Moestchen, Nurse Manager. Ms. Fletcher's job duties involved assisting nursing home residents with activities of daily living. The duties included assisting residents with getting out of bed, assisting them with their hygiene, including bathing the residents, assisting the residents with getting dressed and taking residents to various activities. Ms. Fletcher worked in a unit where all but three residents required a one-person assist. Three of the residents in the unit required a two-person assist. Ms. Fletcher sometimes was called up on to assist in another area that had a higher percentage of residents who required a two-person assist. However, during the last month of Ms. Fletcher's employment, she worked exclusively in her assigned unit. During any given shift, Ms. Fletcher worked as part of a team that consisted of a nurse and other CNAs who were expected to assist each other as needed.

The CNA job description included lifting requirements. These requirements included the ability to lift 75 pounds occasionally and 45 pounds frequently from desk to chair level, the ability to left 50 pounds occasionally and 30 pounds frequently from chair to floor level, and the ability to left 30 pounds occasionally and 20 pounds frequently from desk to shoulder level. The job description also included a requirement that the CNA be able to occasionally push and/or pull

75 to 100 pounds. Toward the end of Ms. Fletcher's employment, the employer was revising the left requirement to move toward having an employee lift no more than 35 pounds without assistance.

In 2010, a physician at the University of Iowa Hospitals and Clinics diagnosed Ms. Fletcher with rheumatoid arthritis. Despite the diagnosis Ms. Fletcher was able to perform all of her assigned work duties until March 14, 2017. In early 2017, Ms. Fletcher began to experience symptoms of what she thought was a flare-up of her rheumatoid arthritis. Ms. Fletcher found is more difficult to perform lifting, but managed nonetheless to perform her assigned duties.

On March 13, 2017, Ms. Fletcher's primary care provider, a licensed nurse practitioner, faxed a letter to Ms. Moestchen on Ms. Fletcher's behalf. The letter indicated that Ms. Fletcher was requesting "light-duty" in the form of working with only one-person assist residents due to a flare up of her rheumatoid arthritis symptoms. The letter requested that the employer provide this accommodation until Ms. Fletcher's symptoms resolved or were more controlled. Neither the nurse practitioner nor Ms. Fletcher asked for any accommodation beyond being assigned to care for only one-person assist residents. When Ms. Moestchen received the letter, she instructed Ms. Fletcher to meet with Lori Treangen, Human Resources Manager, to discuss the letter and the request.

At the end of her shift on March 14, 2017, Ms. Fletcher met with Ms. Treangen. Ms. Fletcher asked Ms. Treangen what she thought of the letter and the request. Ms. Treangen told Ms. Fletcher that the employer did not have "light-duty" work and that Ms. Fletcher was being taken off the schedule. Ms. Treangen told Ms. Fletcher that she could go on FMLA and return when her doctor released to perform all of the duties associated with the CNA position. When Ms. Fletcher asserted that there were places where she could work with one-assist residents, Ms. Treangen replied that there was no guarantee that those residents would remain one-assist patients. Ms. Treangen reiterated that Ms. Fletcher was off the schedule until she provided a note from her doctor indicating that she could perform all of the CNA duties. Ms. Fletcher had not asked to be taken off the schedule. Ms. Fletcher needed the income the employment provided. Ms. Fletcher concluded she had been discharged and left the meeting. On the next day, Ms. Moestchen telephoned Ms. Fletcher to confirm that Ms. Fletcher understood that she had been taken off the schedule.

About a week later, Ms. Treangen contacted Ms. Fletcher to further the discussion regarding FMLA leave. The employer's position had not changed. Ms. Fletcher was not interested in FMLA leave and declined to continue in the conversation.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113) provides as follows:

> Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.
> a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory–taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.
> b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.
> c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

An employer had an obligation to provide an employee with reasonable accommodations that would allow the employee to continue in the work. See *Sierra v. Employment Appeal Board,* 508 N.W. 2d 719 (Iowa 1993). In *Wills v. Employment Appeal Board,* the Supreme Court of Iowa held that an employee did not voluntarily separate from employment where the employee, a CNA, presented a limited medical release that restricted the employee from performing significant lifting and the employer, as a matter of policy, precluded the employee from working so long as the medical restriction continued in place. See *Wills v. Employment Appeal Board*, 447 N.W.2d 137 (Iowa 1989). In *Wills*, the Court concluded that the employer's actions amounted to a discharge from the employment.

The present case is on point with the *Wills* case. Ms. Fletcher asked the employer for a reasonable and temporary accommodation related to the CNA lifting requirement. The request was relatively modest, that Ms. Fletcher only be assigned to care for residents who needed a one-person assist. Almost all of the residents in Ms. Fletcher's assigned work area fell into that category. About half or more of the residents in another area where Ms. Fletcher sometimes assisted fell into the category. The employer unreasonably elected, as a matter of policy, not to grant Ms. Fletcher's reasonable request for a medically-based accommodation that would allow her to continue in the employment. The weight of the evidence establishes that the employer had the ability to accommodate the request without experiencing undue hardship. The employer's decision to take Ms. Fletcher off the work schedule and compel Ms. Fletcher to commence an FMLA leave was a discharge from the employment. The discharge was not based on misconduct on the part of Ms. Fletcher. Because the discharge was not based on misconduct, the separation does not disqualify Ms. Fletcher for unemployment insurance benefits or relieve the employer's account of liability for benefits. See Iowa Code section 96.5(2)(a) (regarding disqualification based on a discharge for misconduct in connection with the employment) and Iowa Administrative Code rule 871-24.32(1)(a) (defining misconduct in connection with the employment). Because the separation was not a voluntary quit, Ms. Fletcher is under no obligation to return to the employment upon "recovery" to offer her services. Ms. Fletcher is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The April 3, 2017, reference 01, decision is reversed. The claimant was discharged on March 14, 2017 for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs