

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEARNA L TOWNSEL
Claimant

APPEAL NO. 10A-UI-06600-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MAINSTREAM LIVING INC
Employer

OC: 03/28/10
Claimant: Appellant (5)

Section 96.5(2)(a) – Suspension for Misconduct
Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

DeArna Townsel filed a timely appeal from the April 29, 2010, reference 01, decision that denied benefits effective March 28, 2010 based on an Agency conclusion that she had requested and was on an approved leave of absence. After due notice was issued, a hearing was started on June 21, 2010 and completed on July 26, 2010. Ms. Townsel participated on June 21, but did not make herself available on July 26. Marcanne Lynch, Human Resources Manager, represented the employer and presented additional testimony through Traci Miner, Program Administrator, and Tracy Moore. Exhibits One through Six and A were received into evidence.

ISSUES:

Whether Ms. Townsel was suspended for misconduct in connection with the employment that disqualifies her for unemployment insurance benefits.

Whether Ms. Townsel was at any point since she established her claim for benefits on a leave of absence that she had requested and that the employer had approved.

Whether Ms. Townsel has been able to work and available for work at all times since she established her claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: DeArna Townsel started her part-time employment with Mainstream Living, Inc., in March 2009 and continues as a part-time direct care technician. Ms. Townsel's immediate supervisor is Tracy Moore. At the start of the employment, the employer advised Ms. Townsel that there were certain state-mandated courses that Ms. Townsel was required to complete within the first year of her employment. Ms. Townsel had previously worked in the direct care field and understood the courses were required if she wished to continue in the employment. The required training included medication management and abuse reporter training. The training was free.

On December 15, 2009, Traci Miner, Program Administrator, notified Ms. Townsel that she would be removed from the work schedule if she did not complete the required training by February 15, 2010. On February 12, 2010, Ms. Miner notified Ms. Townsel that she was being removed from the work schedule because she had failed to complete the required training. Ms. Townsel worked until February 28, 2010 and then started the period of suspension. Ms. Miner advised Ms. Townsel that if she did not complete the training by April 16, 2010, she would be discharged from the employment. Ms. Townsel did not take steps to complete the necessary training until the third week of March.

Ms. Townsel completed the required training in April by the deadline, but requested additional time off because of her child's father's health issues. The employer granted the request for additional time off. Ms. Townsel returned to the employment on May 1, 2010.

REASONING AND CONCLUSIONS OF LAW:

There are two distinct sets of issues to be addressed. The first is whether the temporary separation from the employment was for a reason that disqualified Ms. Townsel for unemployment insurance benefits. It was. The second is whether Ms. Townsel was able and available for work during the period that she was away from the employment. She was not.

Whenever a claim for unemployment insurance benefits is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. 871 IAC 24.32(9).

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The weight of the evidence establishes ongoing negligence on the part of Ms. Townsel relating to her failure to complete the state-mandated training within the first year of her employment. In addition, Ms. Townsel rendered herself unemployable in the direct care field when she failed to complete state-mandated training within the first twelve months of her employment. Ms. Townsel was suspended for misconduct in connection with the employment. Effective March 1, 2010, Ms. Townsel was disqualified for benefits until she worked in and was paid wages for insured work equal to ten times her weekly benefit amount, provided she was otherwise eligible.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The weight of the evidence indicates that Ms. Townsel was able to work and available to work from the time she established her claim for benefits on March 28, 2010, until April 17, 2010, when she was expected to return to work. Effective April 17, 2010, Ms. Townsel was not available for work because she had requested and been approved for a leave of absence that ran from April 17, 2010 through April 30, 2010. A leave of absence requested by the employee and approved by the employer is deemed a period of voluntary unemployment and disqualifies the employee for unemployment insurance benefits during the period of the leave. See 871 IAC 24.23(10). On May 1, 2010, Ms. Townsel returned to prior duties and, for that reason, no longer met the work availability requirements of Iowa Code section 96.4(3).

DECISION:

The Agency representative's April 29, 2010, reference 01, decision is modified as follows. The claimant was suspended for misconduct effective March 1, 2010 and was disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer's account will not be charged for any benefits paid to the claimant for the period of the suspension. The claimant was able and available for work from March 28, 2010 through April 16, 2010, but effective April 17, 2010, the claimant was not available for work during an approved leave of absence. Thus, effective April 17, 2010, there was a second factor disqualifying the claimant for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw