

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

NAAKU S FARIAS
112 E PARKER ST
WATERLOO IA 50703-2524

CARE INITIATIVES
C/O TALK UC EXPRESS
PO BOX 6007
OMAHA NE 68106-6007

Appeal Number: 06A-UI-05079-CT
OC: 04/09/06 R: 03
Claimant: Appellant (1)

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(1)d – Separation Due to Illness/Injury

STATEMENT OF THE CASE:

Naaku Farias filed an appeal from a representative's decision dated May 4, 2006, reference 01, which denied benefits based on her separation from Care Initiatives. After due notice was issued, a hearing was held by telephone on May 30, 2006. Ms. Farias participated personally. The employer participated by Sue Webber, Director of Nursing, and Val Forrester, Assistant Director of Nursing. The employer was represented by Lynn Corbeil of TALX UC eXpress.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Farias began working for Care Initiatives on November 2, 2005, and last performed services on April 5, 2006. She worked full time as a

certified nursing assistant. On April 6, 2006, she notified the employer that she would be unable to return to work until April 12 because of a shoulder injury she sustained away from work on April 5. Ms. Farias notified the employer on April 12 that she could not return that day because she had to see the doctor again. On April 13, she provided a doctor's statement releasing her to return to work on light duty. She was to remain on light duty for two weeks. The employer did not have light-duty work available.

Ms. Farias also notified the employer on April 13 that she might need to have surgery on her shoulder. She was advised that she could not return to work until such time as she had a full release from her doctor. Ms. Farias underwent surgery on May 3. It is anticipated that she will need at least six weeks to recuperate.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Farias was separated from employment for any disqualifying reason. She left the employment on April 6 because of an injury sustained away from work. She immediately notified the employer of the need to be absent. She re-offered her services on April 13 but did not have a full release at that point. Pursuant to Iowa Code section 96.5(1)d, Ms. Farias had to have recovered from her injury when she re-offered her services on April 13. Where the injury is not work-related, the individual must have a full release with no restrictions or limitations when she re-offers her services. See Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa 1985). As of April 13, Ms. Farias could only perform light-duty work. Therefore, she had not completely recovered from her injury and is not entitled to job insurance benefits under section 96.5(1)d.

Ms. Farias has now undergone surgery to her shoulder and has not been released to return to work. She is not entitled to job insurance benefits until such time as she obtains a full release and re-offers her services to the employer, provided the employer does not have suitable, comparable work available at that time.

DECISION:

The representative's decision dated May 4, 2006, reference 01, is hereby affirmed. Ms. Farias left employment for medical reasons but has not satisfied the requirements of Iowa Code section 96.5(1)d. Benefits are withheld effective April 9, 2006, and until such time as she has been released to return to work and has re-offered her services to the employer. Alternatively, benefits are denied until such time as Ms. Farias has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

cfc/kjw