

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ERIN R MONTGOMERY**  
Claimant

**APPEAL NO. 09A-UI-16671-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OTTUMWA COACHES INC**  
Employer

**OC: 12/28/08**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.5(1)d – Voluntary Leaving/Illness or Injury

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 28, 2009 (reference 09) decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on December 10, 2009. Claimant participated. Employer participated through company president Larry Northup.

**ISSUE:**

The issue is whether quit the employment without good cause attributable to the employer or if he was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked part-time as a bus washer and his last day of work was July 30, 2009. His wife reported to the employer that claimant had a serious medical situation and they would get back with more information. Claimant was diagnosed with and treated for a stroke at the Veterans' Affairs Hospital in Iowa City. Claimant contacted employer on September 22 and said he felt ready to go back to work and agreed that he would obtain a written medical release for the employer's insurance company. He contacted the employer again on September 24 and informed employer he was still waiting for the release and agreed to turn in his key. No deadline for presentation of the release was expressed either verbally or in writing. Operations manager Teri Carr wrote claimant a "cease employment notice" letter dated September 24 and notified him he was eligible to reapply for work in the future. (Claimant's Exhibit B) Claimant obtained a written release dated September 30, 2009. (Claimant's Exhibit A) Carr wrote to Iowa Workforce Development (IWD) on October 19 after receipt of the Notice of Claim confirming that the claimant's position was filled and he returned his key on September 24 "so we could use them for the prospective coach cleaner." (Employer's Exhibit 1)

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not quit but was discharged for no disqualifying reason.

Iowa Code § 96.5-1-d provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

871 IAC 24.25(35) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

The claimant was not required to return to the employer to offer services after the medical recovery on September 30, 2009 because he had already been involuntarily terminated from the employment on September 24, 2009. Thus, the separation was a discharge.

Iowa Code § 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.

Iowa Code § 96.5-1-d provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Although employer is not obligated to provide light duty work for an employee whose illness or injury is not work related, the involuntary termination from employment while under medical care was a discharge from employment. Although Northup argues that Carr did not have authority to discharge claimant, she signed her name as a representative of the employer on employer's

letterhead in a protest letter to IWD and in the termination letter to claimant. Employer's management miscommunication about authority to hire and fire is not claimant's responsibility. The employer did not place the claimant on notice that he would lose his job by a date certain if he were not released to return to work or specify a short-term date by which he could return. Instead, employer fired him for his failure to provide a medical release to return to work by the arbitrary date of September 24, 2009, thus no disqualifying reason for the separation has been established. Benefits are allowed, provided claimant is otherwise eligible.

Iowa Code § 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(1)a 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

871 IAC 24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

Inasmuch as the medical condition was not work-related but employer involuntarily terminated the employment before he was released to return to work with or without restriction, claimant has established his ability to and availability for work as of the September 30, 2009 medical release date.

**DECISION:**

The October 28, 2009, reference 09, decision is affirmed. The claimant did not quit but was discharged for no disqualifying reason. He is able to and available for work effective September 30, 2009. Benefits are allowed, provided he is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs