

IN THE COURT OF APPEALS OF IOWA

No. 5-305 / 94-2144

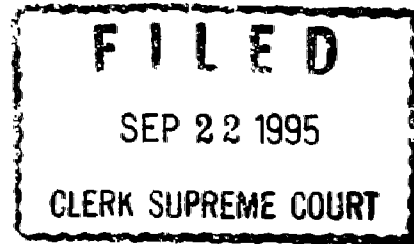
ANGELA RICHE,

Petitioner-Appellant,

vs.

**EMPLOYMENT APPEAL BOARD and
PRINCETON CARE CENTER,**

Respondent-Appellees.



Appeal from the Iowa District Court for Polk County, Donna L. Paulsen,
Judge.

The petitioner appeals from the district court's decision on judicial review affirming the respondent board's decision denying her claim for unemployment benefits. **AFFIRMED.**

Anita Olson, Des Moines, for appellant.

William C. Whitten and Joe E. Smith, Employment Appeal Board, for appellees.

Considered by Hayden, P.J., and Sackett and Habhab, JJ.

SACKETT, J.

Plaintiff-appellant Angela Riche appeals from an Employment Appeal Board decision affirmed by the district court denying her employment benefits following her separation of employment with respondent-appellee Princeton Care Center. We affirm.

Riche was hired as a nurses' aide for Princeton Care Center in mid-summer of 1993. Her job required lifting in excess of thirty pounds of weight. Riche was pregnant when hired and her employer was aware of her pregnancy. In September, the employer requested a doctor's statement she was able to continue to work despite her pregnancy. Her pregnancy was identified as a high risk pregnancy; and after seeing a doctor, the doctor restricted her from lifting more than thirty pounds of weight.

Riche was told she could only return to work if she could perform the required duties of a certified nurses' aide. Because of the lifting restrictions, she could not. Riche wanted to continue working through her pregnancy. Riche sought unemployment compensation but it was denied on a finding she left her job voluntarily without good cause attributable to her employer. She appealed to the district court and the agency decision was affirmed.

On appeal, Riche contends (1) she was released to return to work and there was no finding she was not able to perform her duties; (2) the provisions of Iowa

Code section 96.5(1)(d) are not applicable; (3) the decision of the agency was not supported by substantial evidence; and (4) there was not evidence of misconduct.

We review an agency finding at law. *Harlan v. Iowa Dep't of Job Serv.*, 350 N.W.2d 192, 193 (Iowa 1984). The decision of the agency is final if supported by substantial evidence and correct conclusions of law. *Heatherly v. Iowa Dep't of Job Serv.*, 397 N.W.2d 670 (Iowa 1986).

Riche's first argument appears to be that the finding she was not able to return to work was not supported by substantial evidence. It was her burden to establish she was able to return to work. See Iowa Code § 96.6(2); *Geiken v. Lutheran Home for the Aged Ass'n*, 468 N.W.2d 223, 225 (Iowa 1991). Riche has neither returned to work nor supplied her employer with a release she is able to return to work; nor has she established she is experienced or qualified to do other types of jobs.

Riche contends Iowa Code section 96.5(1)(d) is not applicable to this case because she agreed to return to work and was only restricted in her ability to do her job. We disagree.

Riche next contends the findings of the Employment Appeal Board are not supported by substantial evidence. Substantial evidence is that evidence a reasonable mind could accept to reach the same conclusion. *Freeland v. Employment Appeal Bd.*, 492 N.W.2d 193, 196 (Iowa 1992). Riche's argument she did not intend to quit is not dispositive of this issue. The focal issue is whether she was able and available to work. Riche failed to establish she was able to do the work. Unquestionably,

restrictions placed on Riche by her doctor prevented her from performing the duties necessary in her job as a nurses' aide and her employer has no obligation to provide any reasonable accommodation to keep her employed. *See Hedges v. Iowa Dep't of Job Serv.*, 368 N.W.2d 862, 866-67 (Iowa App. 1985). We affirm the agency and the district court.

AFFIRMED.