

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER M HESS
Claimant

APPEAL NO. 10A-UI-00334-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANPOWER INTERNATIONAL INC
Employer

**Original Claim: 07/19/09
Claimant: Respondent (4)**

Section 96.5-1-d - Voluntary Leave Work Due to an Injury
Section 96.4-3 - Ability to and Availability for Work

STATEMENT OF THE CASE:

The employer appealed a representative's December 29, 2009 decision (reference 04) that concluded the claimant was qualified to receive benefits, and the employer's account was subject to charge because the employer discharged the claimant for non-disqualifying reasons. A telephone hearing was held on February 18, 2010. The claimant did not respond to the hearing notice or participate in the hearing. Aaron Schroeder, the branch manager, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits?

Is the claimant able to and available for work?

FINDINGS OF FACT:

The employer is a temporary employment staffing firm. The claimant registered to work for the employer's client on September 29, 2009. On September 30, 2009, the employer assigned the claimant to a job. The last day the claimant worked at the assignment was November 17, 2009. The claimant did not complete this job assignment. The claimant could have continued to work at this assignment after November 17, 2009.

On November 19, 2009, the claimant contacted the employer to report she was unable to work because she had hurt her shoulder outside of work. The employer asked the claimant to contact the employer when she was fully released to work.

On February 2, 2010, the employer talked to the claimant and she still had not been released to work. At that time, she filed a workers' compensation claim, which is being investigated.

The claimant established a claim for benefits during the week of July 19, 2009. She reopened her claim during the week of November 15, 2009.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5-1. In this case, the claimant voluntarily left her employment when she was unable to work as the result of a shoulder injury. Since the employer told the claimant to contact them when she was released to return to work without any work restrictions, the claimant is technically on a leave of absence. A claimant who is on a leave of absence is not eligible to receive benefits, because she is not available to work. Iowa Code § 96.5-3, 871 IAC 24.23(10). Since the claimant has not been released to work, she is not able to or available for work as of November 19, 2009.

DECISION:

The representative's December 29, 2009 decision (reference 04) is modified in the employer's favor. The claimant is essentially on a leave of absence after she initially reported she was unable to work as the result of an injury that occurred outside of work. Since the employer asked the claimant to return to work when she was fully released, the claimant is technically on a leave of absence and is not eligible to receive benefits. Since the claimant has work restrictions, she is not able to or available for work until she provides a doctor's statement indicating she has been released to work. As of November 19, 2009, the claimant is not eligible to receive benefits, because she is on a leave of absence and is restricted from working. As of the date of this decision, the claimant is not eligible to receive benefits as of the week ending November 21, 2009, and continues until she provides a doctor's statement to the employer and to the Department that indicates she is released to work and what, if any, work restrictions she has.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw