

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIE MUTO
Claimant

APPEAL NO. 09A-UI-05906-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARIOTT HOTEL SERVICES INC
Employer

OC: 03/22/09
Claimant: Appellant (1)

Section 96.5-1-d – Voluntary Quit for Medical Reasons
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Julie Muto (claimant) appealed a representative's April 9, 2009 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Marriott Hotel Services (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 12, 2009. The claimant participated personally. The employer participated by Kim Compton, Human Resources Manager.

ISSUE:

The issue is whether the claimant is denied unemployment insurance benefits because she voluntarily quit work without good cause attributable to the employer. In addition, whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 29, 2008, as a full-time housekeeper. The claimant was diagnosed with cataracts. Her last day of work was August 14, 2008. On August 21, 2008, she wrote the employer a letter of resignation. The claimant quit because she could not see well enough to perform her work. Continued work was available had the claimant not resigned.

In December 2008, the claimant had cataract surgery. The physician released her to return to work about a week later. She reapplied for work with the employer but no work was available. The claimant filed for unemployment insurance benefits with an effective date of March 22, 2009.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

Iowa Code section 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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). A claimant is not disqualified for leaving employment if he or she (1) left employment by reason of illness, injury or pregnancy; (2) on the advice of a licensed and practicing physician; (3) and immediately notified the employer or the employer consented to the absence; (4) and when certified as recovered by a physician, the individual returned to the employer and offered services but the regular or comparable suitable work was not available. Area Residential Care, Inc. v. Iowa Department of Job Service, 323 N.W.2d 257 (Iowa 1982).

The claimant left work due to a medical issue. The claimant's physician did not advise the claimant to leave work. The claimant has failed to provide the employer with certification that she has recovered. The claimant has failed to meet the requirements of the statute and, therefore, is not eligible to receive unemployment insurance benefits.

The next issue is whether the claimant was able and available for work. For the following reasons the administrative law judge concludes she is.

871 IAC 24.23(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness she is considered to be unavailable for work. The claimant was released to return to work after her cataract surgery in December 2008. She is considered to be available for work when she filed for unemployment insurance benefits on March 22, 2009. The claimant is qualified to receive unemployment insurance benefits beginning March 22, 2009.

DECISION:

The representative's April 9, 2009 decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the

claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible. The claimant is qualified to receive unemployment insurance benefits beginning March 22, 2009.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css