

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORI A MATNEY
Claimant

APPEAL NO. 10A-UI-05039-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OPPORTUNITY VILLAGE
Employer

**OC: 02/21/10
Claimant: Appellant (1)**

Iowa Code Section 96.5(1)(d) – Voluntary Quit
Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Lori Matney filed a timely appeal from the March 26, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 17, 2010. Ms. Matney participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Exhibits A and B were received into evidence.

ISSUE:

Whether Ms. Matney separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Lori Matney was employed by Opportunity Village as a personal assistant in an intensive care facility (ICF). The employer provides residential care to mentally and/or physically disabled adults. The residents live in cottages. The intensive care cottages are for those residents with behavioral/aggression issues. Workers such as Ms. Matney who worked in the ICFs were required to undergo training in self-defense and use of physical restraint. Ms. Matney has worked for the employer during more than one separate periods of employment. Ms. Matney most recently began working for the employer in May 2008 and last performed work for the employer in August 2009.

Ms. Matney has been diagnosed with hepatitis C with advanced to severe liver damage. While Ms. Matney was still performing work for the employer, Ms. Matney commenced a 48-week course of chemotherapy. Ms. Matney's doctor told her that the first four or five months of chemotherapy would be the worst. Ms. Matney advised the employer of her diagnosis and her course of treatment. Ms. Matney was initially able to continue performing her regular duties in the ICF cottage. This changed during the first week of August 2009, when a male resident attacked Ms. Matney from behind, trying to bite and scratch her. Ms. Matney was physically weakened by the physical therapy and was unable to defend herself against the male resident.

Ms. Matney had to call out to coworkers for help and two coworkers rescued Ms. Matney from the male resident's assaultive behavior.

The next day, Ms. Matney asked the employer for a temporary transfer to a non-ICF cottage until she finished her course of chemotherapy. After the employer denied Ms. Matney's transfer request, Ms. Matney obtained a note from her doctor that said she could not work around people who might attack her. Ms. Matney applied for a leave of absence under the Family and Medical Leave Act was approved for a medical leave. Ms. Matney's FMLA leave expired on October 5, 2009. In October, the employer sent Ms. Matney as letter that said her FMLA job protection had ended on October 5, 2009. Ms. Matney had continued to have regular contact with clients she had worked with and desired to return to her previous duties as soon as she recovered from her medical treatment. Ms. Matney would like to return to her previous duties once she completes her course of chemotherapy. At the time of the May 17, 2010 appeal hearing, Ms. Matney was scheduled have her last chemotherapy injection on May 30 and expected to be released to return to her previous duties effective June 1, 2009.

Ms. Matney delayed filing a claim for unemployment insurance benefits until the week of February 21, 2010. Before and since that time, Ms. Matney has been actively engaged in a search for new employment. Ms. Matney's only medical restriction is that she cannot work around assaultive individuals.

REASONING AND CONCLUSIONS OF LAW:

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.

Workforce Development rule 871 IAC 24.26(6)(a) provides as follows:

Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson

Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The weight of the evidence indicates that Ms. Matney voluntarily separated from the employment in August 2009 due to a non-work-related medical condition. The separation at that time was upon the advice of a medical professional. As of the May 17, 2010 appeal hearing, Ms. Matney had not yet recovered from her medical condition and had not been released to return to her previous employment. Based on the evidence in the record, the administrative law judge must conclude that Ms. Matney separated from the employment for a reason that makes her ineligible for unemployment insurance benefits for the time being. There are two courses of action Ms. Matney may follow to requalify for unemployment insurance benefits. One is to recover from her medical condition, be released by her doctor to return to previous duties, and then return to the employer to offer her services as outlined above in 871 IAC 24.26(6)(a). Otherwise, Ms. Matney would be disqualified until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Iowa Code section 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 and (2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good

cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The weight of the evidence indicates that Ms. Matney has been both able to work and available for work since she established her claim for unemployment insurance benefits.

DECISION:

The Agency representative's March 26, 2010, reference 01, decision is affirmed. The claimant voluntarily separated from the employment without good cause attributable to the employer based on non-work-related medical issue. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant may also requalify for benefits by following the steps outlined in 871 IAC 24.26(6)(a) above.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css