

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTINA M ELLICKSON**  
Claimant

**APPEAL NO. 09A-UI-09980-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**YELLOW BOOK USA INC**  
Employer

**OC: 05/24/09**  
**Claimant: Appellant (5)**

871 IAC 24.1(113) – Other Separations  
Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Christina Ellickson filed a timely appeal from the July 2, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 28, 2009. Ms. Ellickson participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Exhibit A was received into evidence.

**ISSUES:**

Whether the claimant separated from the employment for a reason that makes her ineligible for unemployment insurance benefits.

Whether the claimant has been able to work and available for work since establishing her claim for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Christina Ellickson commenced her employment with Yellow Book USA in July 2006 and was a full-time home agent customer service representative. Ms. Ellickson last performed work for the employer on February 27, 2009. Ms. Ellickson then commenced an approved medical leave of absence under the Family and Medical Leave Act (FMLA). Ms. Ellickson was diagnosed with fibromyalgia.

Upon expiration of the 12-week approved absence authorized by the Family and Medical Leave Act, the employer contacted Ms. Ellickson to discuss whether Ms. Ellickson was able to return to work. Ms. Ellickson's doctor had not yet released her to return to work. Julie Cunningham, Leave of Absence Coordinator, notified Ms. Ellickson that the employer was ending the employment. Ms. Ellickson continues under the care of her doctor and has still not been released by her doctor to return to work.

## REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113), provides as follows:

All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. **Layoffs.** A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. **Quits.** A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. **Discharge.** A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. **Other separations.** Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

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 establishes what the administrative code terms an "other separation." Ms. Ellickson had no intention to sever the employment relationship and had not expressed an intent to sever the employment relationship. The employer did not intend to sever the employment relationship, provided Ms. Ellickson was released to return to the employment. The separation occurred because Ms. Ellickson's doctor concluded she was not able to meet the physical requirements of the employment at the end of the 12-week FMLA leave period. The separation does not disqualify Ms. Ellickson for unemployment insurance benefits. Ms. Ellickson would be eligible for benefits, provided she met all eligibility requirements.

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 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.

Administrative Code rule 871 IAC 24.23 provides, in relevant part, as follows:

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

24.23(1) An individual who is ill and presently not able to perform work due to illness.

24.23(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

The weight of the evidence indicates that Ms. Ellickson has not met the work ability and availability requirements of Iowa Code section 96.4(3) since she established her claim for benefits. Ms. Ellickson continues under the care of her doctor, who had not released Ms. Ellickson to return to work. Ms. Ellickson was ineligible for benefits effective May 24, 2009 and continues to be ineligible.

**DECISION:**

The Agency representative's July 2, 2009, reference 01, decision is modified as follows. The claimant neither quit nor was discharged from the employment. The claimant's separation falls into the category of "other separations" and was due her inability to meet the physical requirements of the employment. The separation would not disqualify the claimant for unemployment insurance benefits. The employer's account may be charged for benefits paid to the claimant.

The claimant has not been able to work and available for work, as required by Iowa Code section 96.4(3), since establishing her claim for benefits. The claimant is ineligible for benefits, effective May 24, 2009 and continues to be ineligible for benefits.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/css