

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHALENE PETERSON

Claimant

APPEAL NO. 08A-UI-09281-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MASA LIMITED

Employer

**OC: 08/24/08 R: 04
Claimant: Respondent (2/R)**

Iowa Code Section 96.5-1-d - Voluntary Leaving/Illness or Injury
871 IAC 24.25(35) - Separation Due to Illness or Injury
Iowa Code Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Masa Limited (employer), doing business as Rudy's Tacos North, appealed an unemployment insurance decision dated September 30, 2008, reference 02, which held that Shalene Peterson (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 28, 2008. The claimant participated in the hearing with Ashley Clifton and Ray Hartwig. The employer participated through Fran Macias, Manager; Tahsha Fording, Assistant Manager; and Tonya Black, Supervisor. Employer's Exhibit One was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits?

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 as a full-time cashier/waitress in October 2, 2007 and became a supervisor in November 2007. The claimant went on a medical leave of absence on July 12, 2008 for a non-work-related medical condition. She was pregnant and provided the employer with a medical excuse stating she could not work in the kitchen due to a risk of dizziness and asthma exacerbations. This medical excuse was effective as of July 10, 2008. The claimant was required to work in the kitchen as part of her job duties and since she could no longer carry out these essential duties, the employer placed her on a medical leave of absence. The claimant did not want to go on a leave of absence and only signed the document so she could get her paycheck. The claimant has not yet received a full medical release from the treating physician.

The claimant filed a claim for unemployment insurance benefits effective August 24, 2008 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer or if the employer discharged her for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a.

The claimant could not carry out the essential functions of her position due to non-work-related medical restrictions so the employer placed her on a medical leave of absence on July 12, 2008. The issue then really becomes whether an individual who is unable to meet the job requirements of its employer because of non-work-related medical restrictions is a discharge or a quit. In the case herein, the claimant's inability to perform the work for the employer or meet the employer's job requirements is a voluntary quit. In Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa App. 1985), the Iowa Court of Appeals considered a similar situation where the claimant returned to work but was not reinstated because her physician had continued restrictions that the employer could not meet based on non-employment-related causes. In that case the Court of Appeals determined that the claimant voluntarily left her employment without good cause attributable to the employer and denied unemployment insurance benefits to the claimant.

Unemployment insurance was "not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." White v. Employment Appeal Bd., 487 N.W.2d 342, 345 (Iowa 1992) (citing Butts v. Iowa Dep't of Job Serv., 328 N.W.2d 515, 517 (Iowa 1983)); quoted in Gilmore v. Employment Appeal Board, No. 4-670 / 03-2099 (Iowa App. 11/15/2004). The claimant has not been released to return to full work duties and the employer is not obligated to accommodate a non-work-related medical condition. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated September 30, 2008, reference 02, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css