

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

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CITICORP CREDIT SERVICES INC USA  
c/o TALX UC EXPRESS  
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ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-12006-HT  
OC: 10/30/05 R: 02  
Claimant: Appellant (4)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(1) – Quit  
Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, Tonia Isenberg, filed an appeal from a decision dated November 18, 2005, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on December 13, 2005. The claimant participated on her own behalf. The employer, Citicorp, participated by Unit Manager Pam Mace and was represented by TALX in the person of Cheryl Rothemeyer.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Tonia Isenberg began employment with Citicorp on July 21, 2003. She was a full-time data entry clerk.

The claimant's last day of work was July 11, 2005. She received short-term disability from July 12 until October 14, 2005. Ms. Isenberg talked to her Unit Manager Pam Mace during her time off about her status. Ms. Mace told her she needed to contact the employer as soon as she had been released to return to work to check on the status of her job. The employer could fill her position if needed since her FMLA had been used, but she was still eligible to be hired in another position as long as she applied for it. As of the last conversation between Ms. Mace and Ms. Isenberg, the claimant's position had not been filled but it could be if needed.

The claimant assumed she had been fired or laid off for lack of work because Ms. Mace sent her personal belonging to her. However, this was only because the office was being moved to another location. Ms. Isenberg has not been released to return to work by her doctor as of the date of the hearing.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not.

Iowa Code section 96.5-1 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.

The claimant did not quit her job, she is still employed, although not actively working. She has not contacted the employer to determine if her old position is available or, if not, what other positions are open for. As there has not been a separation, disqualification may not be imposed.

The next issue is whether the claimant is able and available for work. The judge concludes she is not.

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 24.23(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.

Ms. Isenberg is still under a doctor's care for medical reasons and has not been released to return to work. Under the provisions of the above Administrative Code section, she is not able and available for work and is ineligible for benefits.

**DECISION:**

The representative's decision of November 18, 2005, reference 01, is modified in favor of the appellant. Tonia Isenberg is not disqualified because there has been no separation from employment. She currently does not need to earn ten times her weekly benefit amount in order to requalify for benefits.

However, Ms. Isenberg is ineligible for benefits as she is not able and available for work due to being under a doctor's care. When she has been released to return to work by her doctor without restrictions she should notify Iowa Workforce Development of the change in her status.

bgh/pjs