

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FELICIA L LOZANO
Claimant

APPEAL NO. 09A-UI-19110-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLGENCORP LLC
Employer

OC: 11/15/09
Claimant: Appellant (2)

Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated December 17, 2009, reference 01, that concluded she requested and was granted a leave of absence and was considered voluntarily unemployed. A telephone hearing was held on February 4, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Anne Hoffman participated in the hearing on behalf of the employer.

ISSUE:

Did the claimant request and receive a leave of absence so that she is voluntarily unemployed?

FINDINGS OF FACT:

The claimant worked full time as an assistant manager for the employer from November 2007, to October 26, 2009. Ann Hoffman is the store manager.

The claimant visited her doctor in October 2009 and found out that she was pregnant, with a due date in June 2010. Her doctor released her to work with a restriction that she not lift more than 30 pounds.

When Hoffman received the doctor's statement, he informed the claimant that the employer could not accommodate a non-work-related weight restriction and she would not be allowed to work until she could perform the duties in her job description, which includes unloading products and stock products, which sometimes are over 30 pounds. The employer placed her on a leave of absence.

The claimant has not voluntarily quit employment and has not been discharged by the employer. She did not request a leave of absence from the employer and is ready and willing to return to work when the employer allows her to work.

The claimant filed a new claim for unemployment insurance benefits with an effective date of November 1, 2009. She remains subject to a 30-pound weight restriction but has no other work restrictions. She has a high school diploma and her work experience is retail store work. There

are jobs the claimant can perform despite her work restrictions; for example, she could work as a cashier.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant voluntarily quit employment without good cause attributable to the employer or was discharged for work-connected misconduct. The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a.

There is no evidence the claimant quit her job or was discharged for work-connected misconduct. I recognize that Iowa Code section 96.5-1 provides a disqualification for individuals who voluntarily quit employment and Iowa Code 96.5-1-d provides an exception to that rule for individuals who voluntarily leave employment due to pregnancy under certain circumstances. To voluntarily quit, however, means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992). In this case, the claimant never quit employment or intended to leave her job. She desired to continue to work but the employer would not allow her to work.

This is like Wills v. Employment Appeal Board, 447 N.W.2d 137 (Iowa 1989), in which the Supreme Court considered the case of a pregnant CNA who went to her employer with a physician's release that limited her to lifting no more than 25 pounds. Wills filed a claim for benefits after the employer did not let her return to work because of its policy of never providing light-duty work. The Supreme Court ruled that Wills became unemployed involuntarily and was able to work because the weight restriction did not preclude her from performing other jobs available in the labor market.

The next issue is whether the claimant was able to and available for work as required by Iowa Code section 96-4-3. The unemployment insurance rules provide that a person must be physically able to work, not necessarily in the individual's customary occupation, but in some reasonably suitable, comparable, gainful, full-time endeavor that is generally available in the labor market. 871 IAC 24.22(1)b. The evidence establishes that the claimant was able to perform gainful work, just not work that requires lifting of over 30 pounds. There is unquestionably work available in the labor market meeting such restrictions, and the claimant has shown she was available for work.

The rules further provide that a claimant is considered unavailable for work if she requested and was granted a leave of absence, since the period is deemed a period of voluntary unemployment. 871 IAC 23(10). In this case, however, the claimant did not request the leave of absence so that she cannot be considered to have been voluntarily unemployed.

DECISION:

The unemployment insurance decision dated December 17, 2009, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css