

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAWN M HINDS

Claimant

APPEAL NO. 11A-UI-02093-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES INC

Employer

OC: 11/07/10

Claimant: Respondent (2-R)

Section 96.5(1)(d) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 9, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on March 21, 2011. Claimant Dawn Hinds did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Rochelle Jordan, human resources generalist, represented the employer. The administrative law judge took official notice of the Agency's administrative record, which indicates no benefits have been disbursed to the claimant in connection with the claim for benefits that was effective November 7, 2010.

ISSUE:

Whether Ms. Hinds separated from the employment for a reason that disqualifies her for unemployment insurance purposes.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Dawn Hinds was employed by APAC Customer Services, Inc., as a full-time customer service representative in training from June 21, 2010 until September 22, 2010, when she voluntarily quit due to non-work-related medical issues. Ms. Hinds never graduated out the employment training program. During the employment, Ms. Hinds was absent for one or more extended periods due to anxiety. Ms. Hinds was being treated by a health care provider for anxiety issues. Ms. Hinds spoke with her trainer and indicated that she needed to separate from the employment based on her anxiety issues. Ms. Hinds provided the employer with a note from her health care provider that indicated she would not be able to work for the foreseeable future. The employer continued to have work available to Ms. Hinds.

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 817 IAC 24.26(6) 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.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

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.

Ms. Hinds failed to appear for the hearing and thereby failed to present any evidence.

The weight of the evidence in the record establishes that Ms. Hinds voluntarily quit the employment due to a non-work-related illness. The evidence further establishes that the quit was upon the advice of medical professional. The evidence fails to establish that Ms. Hinds has

recovered from the illness, been released to work, or that she has returned to the employer after recovering from her illness to offer her services. The quit was without good cause attributable to the employer. Ms. Hinds 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 employer's account shall not be charged for benefits paid to Ms. Hinds.

Ms. Hinds may also requalify for benefits by recovering from her illness, being released to return to work, and returning to the employer to offer her services. If after all that the employer does not have work available for Ms. Hinds, then Ms. Hinds would be eligible for benefits, provided she meets all other eligibility requirements.

Because no benefits have been disbursed to the claimant in connection with the claim, there is no need for a remand to address overpayment of benefits. But, there is need of a remand to address whether the claimant has been able to work and available for work since she filed her claim for benefits.

DECISION:

The Agency representative's February 9, 2011, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. 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 employer's account shall not be charged. The claimant may also requalify for benefits by recovering from her illness, being released to return to work, and returning to the employer to offer her services. If after all that the employer does not have work available for the claimant, then the claimant would be eligible for benefits, provided she meets all other eligibility requirements.

This matter is remanded to the Claims Division for determination of whether the claimant has been able to work and available for work since she established her claim for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw