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

NUNC PRO TUNC
Appeal Number: 06A-UI-06988-DT
OC: 06/04/06 R: 04
Claimant: Appellant (4)

MICHELLE R HENDRIKSEN
1012 KATHEY DR
MAQUOKETA IA 52060-2513

DAC INC
1710 E MAPLE
MAQUOKETA IA 52060

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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1-d – Voluntary Leaving/Illness or Injury
871 IAC 24.25(35) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

Michelle R. Hendriksen (claimant) appealed a representative's June 28, 2006 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from DAC, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 28, 2006. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. During the hearing, Exhibit A-1 was entered into evidence. The Nunc Pro Tunc decision is issued to correct a typographical error in the Statement of the Case in the initial decision that incorrectly stated that the claimant, rather

than the employer, had failed to respond and did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

FINDINGS OF FACT:

After a prior period of employment with the employer, the claimant most recently began working for the employer on July 3, 2003. She worked full time as supported living specialist in the employer's organization providing services to persons with disabilities. Her last day of work was April 18, 2006.

The claimant had been suffering from some headaches, migraines, and backaches. On April 7, 2006, she became dizzy at work to the point where she had to be relieved of duty and taken to the doctor. After an MRI, the doctor determined that she had a ruptured disk and another disk that was herniated. As of April 19, 2006, the doctor recommended that she stay off work for a period of time and undergo physical therapy and epidural treatment. The claimant verbally indicated that she felt there was some possibility that the back injury was due to repeated lifting at work; the client to whom she was assigned was very large and necessitated being moved in a wheelchair. However, she presented no medical evidence to that effect.

The claimant was granted FMLA (Family Medical Leave) through mid July 2006. However, on June 5, 2006 she spoke with the employer's human resources representative, indicating that she did not wish to wait until the end of the FMLA period and was seeking to be put back to work but with a weight restriction of 20 pounds. The claimant's job description specified that she be able to lift or move up to approximately 75 pounds. The claimant believed that she might be able to work with a client other than the one that had previously been assigned to her, even though working with any client would technically be outside the weight restriction. She asked the human resources representative for any other employment, such as office or clerical work. The representative indicated that there was a part-time accounting position open for which the claimant could make application, but the claimant indicated that this would not be acceptable without some additional work provided to make the position at least 32 hours so that she could receive benefits. The representative responded that no other light-duty was available for the claimant. The claimant replied that the only thing she could accept would be a position of at least 32 hours so she could receive benefits, and since no such position could be provided, the claimant and representative agreed that the claimant's employment would end as of June 5, 2006.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

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.

871 IAC 24.26(6)a, b provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) 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 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.

The intent to quit can be inferred in certain circumstances. Here, unless the injury can be proven to be work-connected, the employer was not required to provide light-duty work. It was the claimant, not the employer, who initiated the separation due to not being provided with the light-duty work she desired.

The claimant has not presented competent evidence showing adequate health reasons attributable to the employer to justify her quitting. As a non-work related medical condition resulting in the separation, the claimant must demonstrated that she has provided evidence to the employer that she has been certified as released to return to full work duties. A “recovery” under Iowa Code section 96.5-1-d means a complete recovery without restriction. Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa App. 1985). Accordingly, the

separation is without good cause attributable to the employer and benefits must be denied at least until such time as she has demonstrated full compliance with the provisions of the law.

DECISION:

The representative's June 28, 2006 decision (reference 02) is modified in favor of the claimant. The claimant voluntarily left her employment without good cause attributable to the employer. As of June 5, 2006, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount or until she has demonstrated full compliance with the provisions of the law regarding certified full recovery and then has offered to return to work, provided she is then otherwise eligible.

ld/kjw/pjs