

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KATHRYN L ZIMMERMAN**  
Claimant

**COMMUNITY OPPORTUNITIES INC**  
Employer

**APPEAL 16A-UI-02639-DB-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/14/16**  
**Claimant: Appellant (4)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Admin. Code r. 871-24.27 – Voluntary Quitting – Part-time Employment  
Iowa Code § 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the February 26, 2016, (reference 01) unemployment insurance decision that denied benefits based upon her voluntarily quitting. The parties were properly notified about the hearing. A telephone hearing was held on March 24, 2016. Claimant, Kathryn L. Zimmerman, participated personally. Employer, Community Opportunities Inc., participated through Human Resource Director Carla Morrow.

**ISSUES:**

Did claimant voluntarily quit the employment with good cause attributable to employer?  
Is the claimant able to and available for work?  
Is the claimant monetarily eligible for benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a program aide from August 10, 2015, and was separated from employment on February 15, 2016, when she resigned from her position. Claimant's job duties consisted of helping with the toddler-aged children and assisting the teachers.

Claimant has a non-work related illness which disrupts her vestibular system. She cannot predict when she has episodes as they are random. When she has the episodes she cannot walk or stand as her sense of balance is disrupted. During the course of her employment there were many days when the claimant could not work due to this illness. She is currently working with her physicians on several courses of treatment. Her doctor has restricted her from driving due to this illness. Her doctor has informed her that she can work so long as she feels able to and has given her releases from work if and when she experiences an episode.

Claimant tendered her resignation in order to focus on her health and work on getting better. She also did not feel it was fair to her co-workers that she was calling in sick so often and wanted the children she helped teach to have some consistency. She also felt that it was a

danger to be around the small children because there was a possibility that she could fall on one of them without notice. This employer did not have any other work available because when claimant has the episodes they are debilitating.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant's separation from employment was a voluntary quit without good cause attributable to the employer. Benefits are denied.

Claimant was not discharged from employment. Claimant voluntarily quit. Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). Claimant intended to quit and tendered her resignation which was effective February 15, 2016.

The next step in the analysis is to determine whether or not the claimant left for good cause attributable to the employer.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.26(6)a 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.

The claimant quit her employment based upon her illness. This illness was not caused or aggravated by her employment. The claimant has not yet recovered from this illness. If the claimant had not quit, there was still work available. While claimant's leaving the employment may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law.

The next issue involves whether or not the claimant is otherwise monetarily eligible for benefits.

Iowa Code § 96.5-1-g 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:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

The separation is disqualifying; however, the claimant appears to be otherwise monetarily eligible according to base period wages. Thus, she may be eligible for benefits based upon those other wages so long as she is able to and available for work.

The last issue in this appeal relates to the claimant being able to and available for work.

Iowa Code § 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".

Iowa Admin. Code r. 871-24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Claimant was ill due to her medical condition and could not perform her work duties. This was the reason why she quit her employment.

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(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.

Claimant continues to suffer from this medical condition and illness and is unable to work because of it. Claimant is not able to and available for work, therefore benefits must be denied.

**DECISION:**

The February 26, 2016, (reference 01) unemployment insurance decision is modified in favor of appellant. Claimant voluntarily left the employment without good cause attributable to the employer, but is otherwise monetarily eligible for benefits based upon her base period wages. However, claimant is not able to work. Benefits are withheld until such time as the claimant is able to work, provided she is otherwise eligible.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/pjs