

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI	
BECKY E MCNEER Claimant	APPEAL NO. 18A-UI-03984-S1-T
HY-VEE INC Employer	ADMINISTRATIVE LAW JUDGE DECISION
	OC: 02/18/18 Claimant: Appellant (2)

Section 96.5-1-d - Voluntary Quit for Medical Reasons

STATEMENT OF THE CASE:

Becky McNeer (claimant) appealed a representative's March 19, 2018, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Hy-Vee (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 24, 2018. The claimant participated personally. The employer provided a telephone number for the hearing. The administrative law judge spoke to Scott Person on April 24, 2018, at the time of the hearing. He indicated the employer did not wish to participate in the hearing.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from December 15, 2016, to October 31, 2017, as a part-time customer service representative. Her physician said she needed to have a joint replaced in her hand due to a non-work-related arthritic condition. The claimant told the employer about her surgery and the employer agreed to her absence from work.

On January 22, 2018, the claimant's physician released her to return to work without restrictions. On January 22, 2018, the claimant called the employer's human resources assistant, told Ms. Wrage she was released, and asked to return to work. Penny Wrage said the claimant she would start work on January 29, 2018. On January 26, 2018, Ms. Wrage telephoned the claimant and said her there were no hours available for the claimant. The employer has never offered the claimant any work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant's separation was attributable to the employer.

Iowa Code section 96.5(1)d provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

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). A claimant is not disqualified for leaving employment if he or she (1) left employment by reason of illness, injury or pregnancy; (2) on the advice of a licensed and practicing physician; (3) and immediately notified the employer or the employer consented to the absence; (4) and when certified as recovered by a physician, the individual returned to the employer and offered services but the regular or comparable suitable work was not available. *Area Residential Care, Inc. v. Iowa Department of Job Service*, 323 N.W.2d 257 (Iowa 1982). 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).

The claimant left work due a medical issue under the advice of her physician. The employer consented to her leaving. The claimant had certification that she had recovered. In addition, the claimant offered her services to the employer. The employer had no work available for the claimant. The claimant met the requirements of the statute. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's March 19, 2018, decision (reference 01) is reversed. The claimant's separation was attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs