

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KIMBERLY S MCCLEARY**

Claimant

**APPEAL NO. 13A-UI-01569-MT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FRENCH WAY CLEANERS/FURRIERS**

Employer

**OC: 01/06/13**

**Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit  
Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated February 1, 2013, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on April 24, 2013. Claimant participated. Employer participated by Harold Cross, Bookkeeper. Exhibit A and B were admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant quit for good cause attributable to employer. The issue in this matter is whether claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on June 1, 2012. Claimant went off work due to non-work-related health issues. Claimant informed employer of the need to seek medical treatment. Employer terminated the employment relationship January 4, 2013 because claimant overextended her leave of absence per union contract. Claimant received a full-duty release effective January 29, 2013. Claimant immediately asked for her job back after the full-duty release. No work was available.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge holds that the evidence has established that claimant voluntarily quit for good cause attributable to employer when employer terminated the employment relationship before claimant recovered from her illness. Upon recovery claimant asked for her job back with no work available. This is a separation for cause attributable to employer because employer terminated the employment relationship before claimant had a full duty release. Benefits allowed.

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.

Claimant was not released to full duty by her doctor until January 29, 2013. Claimant was not able and available for work from January 6, 2013 until January 26, 2013. Benefits are allowed effective January 27, 2013.

**DECISION:**

The decision of the representative dated February 1, 2013, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible. Claimant is not able and available for work January 6, 2013 through January 26, 2013 and benefits shall be withheld for that period. Claimant is able and available for work effective January 27, 2013.

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Marlon Mormann  
Administrative Law Judge

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Decision Dated and Mailed

mdm/css