

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MAXINE C NARVERUD**  
Claimant

**APPEAL NO. 07A-UI-01490-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DIAMOND JO WORTH LLC**  
Employer

**OC: 01/07/07 R: 02**  
**Claimant: Respondent (1)**

Section 96.5-1 - Voluntary Quit  
Section 96.4-3 - Able to and Available for Work

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated February 1, 2007, reference 01, that concluded she voluntarily quit employment with good cause attributable to the employer. A telephone hearing was held on February 27, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Nancy Vine participated in the hearing on behalf of the employer. Exhibits A, B, and C were admitted into evidence at the hearing. The record was left open for a medical statement from the claimant's doctor. That statement is marked as Exhibit D and entered into evidence since the employer was given the opportunity to object but has offered no objection to the document being admitted.

**ISSUES:**

Did the claimant voluntarily quit employment without good cause attributable to the employer?  
Was the claimant able to and available for work?

**FINDINGS OF FACT:**

The claimant worked as a waitress and hostess in the employer's gambling casino from April 7, 2006, to October 23, 2006. The work environment involves exposure to secondhand smoke.

The claimant suffers from rheumatoid arthritis and has been treated by a physician for that condition for several years. She also has problems with her lungs. The claimant was evaluated by her rheumatologist, Clement Michet, M.D. in September 2006. Michet advised the claimant in writing that exposure to tobacco smoke, either through smoking or secondhand smoke would aggravate her health problems and create serious health risks.

The claimant informed her manager about the doctor's recommendations and asked about other work. The claimant was sent to the casino hotel to see if there was work available. The claimant checked but was told there were no openings available. She then resigned due to her doctor's advice about avoiding secondhand smoke.

Besides the restrictions on smoke-filled environments, the claimant is restricted in performing repetitive hand and wrist activities and has a five-pound restriction for lifting, pulling, or grasping. She also must be allowed to sit for part of her work shift. She has sought employment as a store clerk or cashier, and her doctor has certified that she is capable of performing such work with her restrictions.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer.

Iowa Code section 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.

The unemployment insurance rules provide that a claimant is qualified to receive benefits if compelled to leave employment due to a medical condition attributable to the employment. The rules require a claimant: (1) to present competent evidence that conditions at work caused or aggravated the medical condition and made it impossible for the claimant to continue in employment due to a serious health danger and (2) to inform the employer before quitting of the work-related medical condition and that she intends to quit unless the problem is corrected or condition is reasonably accommodated. 871 IAC 24.26(6)b.

The evidence establishes that the claimant satisfied all the conditions of 871 IAC 24.26(6)b and is qualified to receive benefits based on the reasons for her separation from employment.

The unemployment insurance rules further provide that a person must be physically able to work, not necessarily in the individual's customary occupation, but in some reasonably suitable, comparable, gainful, full-time endeavor that is generally available in the labor market. 871 IAC 24.22(1)b. The evidence establishes that the claimant was able to perform gainful work as a store clerk or cashier. There is work available in the labor market meeting such restrictions that the claimant is qualified to perform, and the claimant has been actively looking for such work in compliance with the requirements of the law.

**DECISION:**

The unemployment insurance decision dated February 1, 2007, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs