

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CRYSTAL F MILLARD
Claimant

APPEAL NO. 06A-UI-10467-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRI STATE ENVELOPE CORPORATION
Employer

**OC: 08/13/06 R: 04
Claimant: Appellant (1)**

Section 96.5-1-d – Voluntary Quit for Medical Reasons
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Crystal Millard (claimant) appealed a representative's October 23, 2006 decision (reference 04) that concluded she was not eligible to receive unemployment insurance benefits because she had voluntarily quit employment with Tri State Envelope (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 8, 2006. The claimant participated personally. The employer did not provide a telephone number where it could be reached and, therefore, did not participate.

ISSUE:

The issues are whether the claimant voluntarily quit work without good cause attributable to the employer and whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on February 21, 2006, as a full-time laborer. At the time the claimant was hired she told the employer she could lift 50 pounds. After working a few days, the claimant started to experience some abdominal cramping. She discovered she was pregnant and saw her physician on February 27, 2006. Her physician restricted her lifting to not more than 25 pounds. The physician did not tell the claimant to quit her job.

On February 27, 2006, the claimant notified the employer's receptionist that she was quitting. On October 5, 2006, the claimant's daughter was born. The claimant is restricted from all work for six to eight weeks after the birth of the child.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without 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.

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).

The claimant left work due to her pregnancy but was not advised to do so by her physician. The claimant has been unable to provide the employer with certification that she has recovered. The claimant has failed to meet the requirements of the statute and, therefore, is not eligible to receive unemployment insurance benefits.

For the following reasons the administrative law judge concludes the claimant is not able and available for work.

871 IAC 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.

When an employee is ill and unable to perform work due to that illness, she is considered to be unavailable for work. The claimant was restricted from working from October 5, 2006. She is considered to be unavailable for work after October 5, 2006. The claimant is disqualified from receiving unemployment insurance benefits beginning October 5, 2006, due to her unavailability for work.

DECISION:

The representative's October 23, 2006 decision (reference 04) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly

benefit amount provided she is otherwise eligible. In addition, the claimant is not able and available for work after October 5, 2006.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw