

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIE K PETERSON

Claimant

APPEAL NO. 09A-UI-03868-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC

Employer

OC: 01-18-09

Claimant: Appellant (1)

Iowa Code § 96.5(1)d – Voluntary Leaving/Illness or Injury
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 5, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 6, 2009. The claimant did participate. The employer did participate through (representative) Ashley Clark, Administrator and Gail Dierks, Director of Nursing. Claimant's Exhibit A was received.

ISSUES:

Did the claimant voluntarily quit her employment without good cause attributable to the employer?

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a certified nurse's aide full time beginning December 8, 2008 through January 16, 2009 when she voluntarily quit.

The claimant quit working on the advice of her physician, Bryon H. Carlson, M.D. who determined that her spinal stenosis pain did not allow her to work anymore. The claimant has not filed for workers' compensation benefits nor has she alleged a work-related injury. The claimant told the employer on January 16 that she was quitting work because her back pain was so bad she could not continue working. The claimant attended rehabilitation services for three months after quitting working. She is not sure if she is physically able to work anyplace currently and has been applying for jobs that she may not be able to work at only because she is required to make job applications for unemployment insurance.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer.

Iowa Code § 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.

The claimant has not established that the injury was work related, as is her burden. The claimant has not recovered and offered to return to work as is her obligation. Thus, the administrative law judge must conclude that she voluntarily quit her employment without good cause attributable to the employer and benefits are denied.

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective January 16, 2009.

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".

871 IAC 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.

871 IAC 24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

Inasmuch as the injury was not work-related and the treating physician has not released the claimant to return to work, the claimant has not established ability to work. Benefits are withheld until such time as the claimant obtains a full medical release to return to work.

DECISION:

The March 5, 2009, reference 01, decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is not able to and available for work effective January 16, 2009.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs