

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ANITA M THORNTON
Claimant

CI ONE INC
Employer

APPEAL NO. 14A-UI-10967-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/21/14
Claimant: Appellant (2)

Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 16, 2014, reference 02, that concluded she requested and was granted a leave of absence and was denied benefits. A telephone hearing was held on November 10, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Scott Fjelstad participated in the hearing on behalf of the employer with a witness, Shellene Norris.

ISSUE:

Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant worked part time for the employer as a sandwich artist from December 8, 2007, to September 23, 2014. The store manager was Charlotte Byrd.

Byrd issued a warning to the claimant on September 23, 2014, after she had received reports from employees and a customer that the claimant was acting erratically on September 16. The claimant takes medication for anxiety and back pain. Byrd told the claimant that she was being taken off the schedule until she got her medication adjusted. The claimant did not request a leave of absence or to be taken off the schedule and was ready and willing to work.

The claimant scheduled an appointment to see her doctor for October 28, which was the earliest appointment she could get. She understood from what she was told that she would not be allowed to work until she saw the doctor.

After the fact-finding interview held on October 14, the claimant was called about returning back to work and was placed on the schedule to work starting October 22.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. The claimant did not voluntarily quit and was not discharged for misconduct. The employer took her off the schedule for concerns about erratic behavior. The employer has not shown that the erratic behavior was due to misconduct.

The next issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3.

The Agency relied on 871 IAC 24.23(10) in denying benefits, which provided that a claimant who requests and is granted a leave of absence is considered voluntarily unemployed and unavailable for work. The claimant, however, did not request the leave of absence, wanted to work, and was able to work. She was involuntarily unemployed after September 23. Since she was able to work and available for work, she was qualified to receive benefits.

DECISION:

The unemployment insurance decision dated October 16, 2014, reference 02, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs