

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**LYDIA L LUITGENS
2624 PATRICIA APT 412
URBANDALE IA 50322**

**ACS STATE HEALTHCARE
c/o TALX UCM SERVICES INC
PO BOX 283
SAINT LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-08260-S2T
OC: 06/20/04 R: 02
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Lydia Luitjens (claimant) appealed a representative's July 13, 2004 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was not able to work with ACS State Healthcare (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 25, 2004. The claimant participated personally. The employer was represented by Cris Scheibe, Hearings Representative, and participated by Melissa Rosen, Human Resources Generalist.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on December 31, 2003, as a full-time pharmacy technician. The claimant suffered an injury on or about December 22, 2004. At the time she was hired the employer agreed the claimant would start at reduced hours meeting the claimant's medical restrictions. The claimant never worked full-time hours and was, therefore, considered to be part-time. The claimant indicated her hours would increase to full-time as she recovered. On or about April 13, 2004, the claimant's hours were further reduced by her physician. When the employer was unable to reduce the claimant's hours, the claimant's physician restricted the claimant from working at all. The claimant notified the employer of her condition and the employer agreed to her absence from work. The claimant was released to return to work with restrictions on July 1, 2004. She has not been released to return to work without restriction. She has not presented herself for work with the employer.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant was able and available for work. For the following reasons the administrative law judge concludes she is.

871 IAC 24.23(1), (7) provide:

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.
- (7) Where an individual devotes time and effort to becoming self-employed.

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 by her physician from April through July 1, 2004. She is considered to be unavailable for work from April through July 1, 2004. The claimant is disqualified from receiving unemployment insurance benefits from April through July 1, 2004, due to her unavailability for work.

The second issue is whether the claimant voluntarily quit without good cause attributable to the employer. For the following reasons the administrative law judge concludes she did.

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 an injury under the advice of her physician. The employer consented to her leaving. The claimant has failed to provide the employer with certification that she has recovered. In addition, the claimant has failed to offer her services to the employer. The claimant has failed to meet the requirements of the statute and, therefore, is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's July 13, 2004 decision (reference 01) is affirmed. The claimant is disqualified from receiving unemployment insurance benefits from April through July 1, 2004, due to her unavailability for work. In addition, the claimant voluntarily left work without good cause attributable to the employer. Benefits are denied.

bas/b