

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LORI J JOHNSON**  
Claimant

**APPEAL NO. 08A-UI-03738-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FEDERAL EXPRESS CORP**  
Employer

**OC: 11/18/07 R: 12  
Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Leaving  
Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Lori J. Johnson. (claimant) appealed a representative's April 9, 2008 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits in conjunction with her employment with Federal Express Corporation (employer). This appeal was consolidated for hearing with one related appeal, 08A-UI-03739-DT. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was convened on May 19, 2008 in which the claimant participated, represented by Mark Sherinian, Attorney at Law. On May 20, 2008 the administrative law judge issued an Order and a new hearing notice for the hearing be reconvened as a telephone hearing on June 2, 2008 in order to add additional issues to the notice for consideration and to allow the employer an opportunity to participate by telephone. The employer responded to the Order and new hearing notice by indicating it was opting not to participate in the hearing. The claimant and Mr. Sherinian were available for participation in the June 2 hearing. Claimant's Exhibits One, Two, and Three were entered into evidence. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Did the claimant voluntarily quit for a good cause attributable to the employer? Is the claimant eligible for unemployment insurance benefits by being able and available for work?

**FINDINGS OF FACT:**

The claimant started working for the employer in October 1983. Until 2003 she worked out of a station in Billings, Montana. In 2003 she transferred to the employer's Mason City, Iowa, station where she worked full time as a swing driver in the employer's delivery and courier business. Her last day of work was October 26, 2007. At that time she offered the employer her resignation. About two days later, as the resignation had not yet been processed, she changed her status to being on a "medical leave," as she had been led to believe that if she was on leave status instead of quitting that she would be considered to be a "displaced driver" for up to six months and therefore eligible to place bids and be considered for other driver positions in other

stations. However, she subsequently learned that the employer did not consider her qualified to be considered for bidding on other driver positions.

The reason the claimant offered her resignation and left her position as driver in the Mason City station was that in the fall of 2006 she had been diagnosed with multiple sclerosis. As her condition progressed, she became increasingly sensitive to excessive heat, stress, and exposure. She had some mild cognitive dysfunction that made multitasking more difficult. Her doctor concluded she was “fully capable of performing her job, [but] she would perform better and be more productive if she had a set route and one that is familiar. The effects of heat and excessive humidity can also degrade her performance.” (Claimant’s Exhibit One.)

The swing driver position in which the claimant had been working meant that she had to drive up to 15 different routes. As suggested by her doctor in early May 2007, the claimant sought a single set route, even one that was part time. The employer declined to assign the claimant to a set route and kept her on the swing position, even after the claimant’s doctor reiterated his recommendation in early October 2007. (Claimant’s Exhibit Two.) Finally, when the employer continued to deny the claimant’s requests for these accommodations, because of the difficulties the work environment was imposing on the claimant’s condition, her doctor recommended that she quit her employment. (Claimant’s Exhibit Three.) As a result, the claimant tendered her resignation.

The claimant preferred to try to continue to seek other positions with the employer which might not aggravate her condition rather than to pursue being placed on full disability status, as she and her doctor felt she was able to work if the employer would make the needed accommodations. Therefore, as she had been advised by a human resources representative that if she was on leave she could continue to bid for other positions, she went on leave status. However, she subsequently learned that in effect she would not be considered for other positions.

#### **REASONING AND CONCLUSIONS OF LAW:**

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. Leaving employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician with notice to the employer is recognized as grounds that are good cause for quitting. Iowa Code § 96.5-1-d. For the quit to be attributable to the employer, factors or circumstances directly connected with the employment must either cause or aggravate the claimant’s condition so as to make it impossible for the employee to continue in employment; the claimant “must present competent evidence showing adequate health reasons to justify termination [and] before quitting [must] have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated.” 871 IAC 24.26(6)b.

The claimant has satisfied these requirements. The employer was unable or unwilling to provide reasonable accommodation in order to retain the claimant’s employment. “Good cause attributable to the employer” does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). Benefits are allowed, if the claimant is otherwise eligible.

The disqualification from the representative's decision was based on a conclusion that the claimant was not fully separated from employment but was on a voluntary leave of absence and therefore voluntarily unemployed and ineligible for unemployment insurance benefits. Iowa Code § 96.4-3; 871 IAC 24.22(2); 871 IAC 24.23(10). The facts of this case demonstrate that the claimant's temporary or permanent separation was not "voluntary," but was involuntary and for good cause attributable to the employer. 871 IAC 24.26(6)b. It was not a mutually negotiated leave from which there was an actual reasonable expectation the claimant would be allowed to return. It was not a bona fide leave of absence such as to constitute a "voluntary period of unemployment." The claimant's placing herself into the "leave" status in this case does not render her unable and unavailable for work.

To be found able to work, "[a]n 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." Sierra v. Employment Appeal Board, 508 N.W.2d 719, 721 (Iowa 1993); Geiken v. Lutheran Home for the Aged, 468 N.W.2d 223 (Iowa 1991); 871 IAC 24.22(1). The claimant has demonstrated that she is able to work in some gainful employment, even her prior occupation with some accommodations. Benefits are allowed, if the claimant is otherwise eligible.

**DECISION:**

The representative's April 9, 2008 decision (reference 01) is reversed. The claimant voluntarily quit for good cause attributable to the employer. She is and was able and available for work. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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