

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

IRANIA C SMITH
Claimant

G M R I INC
Employer

APPEAL 21A-UI-11137-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/21/21
Claimant: Appellant (2R)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the April 20, 2021 (reference 01) unemployment insurance decision that denied benefits to the claimant in her March 21, 2021 claim year based upon a voluntarily quitting work on September 20, 2020. The parties were properly notified of the hearing. A telephone hearing was held on July 8, 2021. The claimant participated personally. The employer did not participate. Claimant waived due notice of the issue of whether the claimant was able to work and available for work pursuant to Iowa Code § 96.4(3) effective her benefit year beginning March 21, 2021. The administrative law judge took official notice of the claimant's unemployment insurance benefits records. The hearing was consolidated with Appeal No. 21A-UI-11138-DB-T.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant able to and available for work effective March 21, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed an original claim for unemployment insurance benefits effective March 22, 2020. That claim expired and the claimant filed another claim in a subsequent benefit year effective March 21, 2021.

Claimant last worked for G M R I Inc. as a part-time server at the employer's restaurant. The last day she physically worked on the job was March 5, 2020. The restaurant closed due to the COVID-19 pandemic for a period of time.

On May 18, 2020, the claimant's medical provider advised that she not work due to the fact that she was pregnant and that medical condition made her more susceptible to serious complications should she contract COVID-19. Claimant informed her supervisor at the restaurant about her medical provider's recommendation. The claimant delivered her child on July 1, 2020, was hospitalized and recovered from delivery by August 26, 2020. On or about September 13, 2020, the claimant was able to work and available for work. She contacted the

employer and was told they were still not back to full capacity service and she would need to reapply for the position.

Claimant's administrative records establish that the issue of whether the claimant was able to and available for work effective her claim year beginning March 22, 2020 has not been adjudicated by the Benefits Bureau of Iowa Workforce Development. That issue will be remanded to the Benefits Bureau for an initial investigation and determination regarding her March 22, 2020 claim year.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

The first issue is whether the claimant voluntarily quit her employment. The administrative law judge finds that she did not.

Iowa Code §96.5(1) 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.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). It is the employer's burden to establish that the claimant voluntarily quit. See Iowa Code § 96.6(2). Claimant had no intention to quit and there was no overt act by the claimant that would have carried out any intention to quit. Claimant was told that she was laid off due to the restaurant closure as of March 22, 2020 during the COVID-19 pandemic.

Iowa Admin. Code r. 871-24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

Claimant was not working for G M R I Inc. effective March 22, 2020 because the employer was closed. When she notified the employer that her medical provider instructed her not to work due to her pregnancy, the employer told her that it was still not operating at full capacity and she was still laid off. When the claimant contacted the employer again on or about September 13, 2020, she was told that she needed to reapply for the position. There was no final act of substantial job-related misconduct that would make this separation from employment disqualifying. As such, the claimant's separation from employment with this employer was a permanent layoff and was not disqualifying.

The next issue is whether the claimant has been able to and available for work. The claimant's current original claim date is March 21, 2021. Whether a claimant has been able to and available for work is a weekly determination. In this case, the administrative law judge will only examine whether the claimant was able to and available for work effective her current claim year beginning March 21, 2021 as the issue of whether the claimant was able to and available for work during her March 22, 2020 claim year will be remanded to the Benefits Bureau for an initial investigation and determination.

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

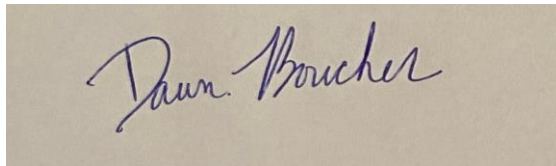
Claimant credibly testified that she has been able to work and available for work since September 13, 2020 when she contacted the employer in an effort to return to work. Effective her current claim year beginning March 21, 2021, the claimant has established that she has been able to work and available for work pursuant to Iowa Code § 96.4(3).

DECISION:

The April 20, 2021 (reference 01) unemployment insurance decision is reversed. Claimant was laid off due to lack of work and the separation from employment on September 13, 2020 is not disqualifying. Benefits are allowed effective March 21, 2021, **provided the claimant is otherwise eligible.**

REMAND:

The issue of whether the claimant was able to work and available for work effective her March 22, 2020 claim year due to her medical provider's instructions that she quarantine and the fact that she was in recovery from labor and delivery as delineated in the findings of fact is remanded to the Benefits Bureau for an initial investigation and determination.



Dawn Boucher
Administrative Law Judge

July 20, 2021
Decision Dated and Mailed

db/lj