

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANN M FULTNER**  
Claimant

**APPEAL NO. 09A-UI-15350-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FAMILY DOLLAR SERVICES INC**  
Employer

**Original Claim: 08/23/09  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated October 5, 2009, reference 04, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 13, 2009. The claimant participated. The employer participated by Leah Douglas, human resources manager. The record consists of the testimony of Ann Fultner, the testimony of Leah Douglas, and Employer's Exhibits 1 through 4.

**ISSUES:**

Whether the claimant voluntarily left for good cause attributable to the employer;

Whether the claimant is able and available for work;

Whether the claimant is on a leave of absence.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a distribution center located in Maquoketa, Iowa. The claimant started working for the employer on September 15, 2008. She initially began as a re-packer and was later transferred to trailer audit. In February of 2009, the claimant was backing up a "tugger" and injured her foot and back. She continued to work following that injury. In June 2009, the claimant's right leg gave out and this led to more back problems. This latter incident is presently under investigation to determine if it is a work-related injury. The claimant continued to work.

The claimant's last day of work was August 28, 2009. She was then placed on a lifting restriction by her physician that limited any lifting to a maximum weight of 30 pounds. The employer did not consider these back problems to be work-related and therefore the claimant could not return to work unless she had a full-duty release. Family Medical Leave (FMLA) was

approved for the claimant on August 28, 2009. However, the claimant did not legally qualify for that leave until September 15, 2009, the date of her first year anniversary with the employer. A regular leave of absence was approved to September 15, 2009, and the claimant is presently on FMLA and has not been terminated by the employer.

On October 21, 2009, the claimant was taken off work completely. At the hearing, she testified that she had been released on November 12, 2009, with a 20-pound weight restriction. She remains on FMLA leave.

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

Iowa Code section 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.

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.

871 IAC 24.25(35) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

(a) Obtain the advice of a licensed and practicing physician;

- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

Iowa Code section 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(2)j(1)(2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

871 IAC 24.23(10) provides:

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

The evidence in this case established that the claimant was unable to work for the employer after August 28, 2009, due to work restrictions placed on her by her physician. The claimant has not established that her current back problems are due to a work-related injury. She has not provided her employer with a physician's certification that she has fully recovered from her injury or illness. In addition, the claimant is presently on a negotiated leave of absence with her employer. She is on approved FMLA leave and that leave has not yet expired.

The claimant has failed to show that she is eligible for unemployment insurance benefits. Benefits are denied.

**DECISION:**

The representative's decision dated October 5, 2009, reference 04, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/kjw