

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**KARONNA SMITH**

Claimant

**APPEAL NO. 18A-UI-11900-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NATIONWIDE MUTUAL INSURANCE CO**

Employer

**OC: 11/18/18**

**Claimant: Appellant (1)**

Section 96.5-1 - Voluntary Quit

Section 96.5-1-d - Voluntary Quit for Medical Reasons

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Karonna Smith (claimant) appealed a representative's November 30, 2018, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Nationwide Mutual Insurance Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 31, 2018. The claimant participated personally. The employer participated by Lisa Anderson, Associate Relations Consultant.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason and whether the claimant is able and available for work.

**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 May 30, 2006, as a full-time member care representative. She had taken Family Medical Leave (FMLA) over the years for migraines. After July 27, 2018, the claimant stopped appearing for work because of migraines. She properly reported her absences. After five days, the employer told her to report her absences to Aetna, the company's third party administrator.

On August 8, 2018, the claimant reported to Aetna and instructed her physician to complete medical documentation for short-term medical disability leave. The claimant had exhausted her supply of FMLA for the year and was, therefore, not eligible for that type of leave. On August 23, 2018, the claimant's physician provided a document to Aetna indicating the claimant could return to work without restrictions on September 1, 2018. Aetna notified the claimant on September 13, 2018, that her short-term disability leave was denied because it received no data or clinical observations from the claimant's physician. The claimant was released to return to work on September 1, 2018, but she did not. The claimant believed the doctor planned to write another note to cover a future time period.

On September 26, 2018, the employer sent the claimant a letter. She signed for the letter on September 27, 2018. The letter explained that the claimant's short-term disability leave had been denied, the claimant was released to return to work by her doctor, and the claimant had not returned to work. The claimant was instructed to either provide medical documentation to Aetna by October 2, 2018, or return to work no later than October 3, 2018. If the claimant did not comply, the employer would assume the claimant had voluntarily quit work. The employer provided the names and numbers of two individuals to contact with questions.

The claimant did not provide medical documentation to Aetna by October 2, 2018, or return to work by October 3, 2018. She did not contact the employer with questions. On October 3, 2018, the employer sent the claimant a letter of separation. The claimant believed she could not work due to migraines on October 3, 2018, but did not express this to the employer. The claimant's physician has not written her a note releasing her to return to work without restrictions since September 1, 2018. Continued work was available had the claimant appeared for work or provided a doctor's note.

She filed for unemployment insurance benefits with an effective date of November 18, 2018.

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

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

Iowa Code section 96.5(1)d provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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's physician provided the employer with certification that she had recovered. She has failed to return to work and perform services for the employer or show that she has not recovered. The claimant has failed to meet the requirements of the statute and, therefore, is not eligible to receive unemployment insurance benefits.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 Admin. Code r. 871-24.25(27) 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:

(27) The claimant left rather than perform the assigned work as instructed.

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). The claimant's intention to voluntarily leave work was evidenced by her actions. She ignored the employer and its instructions. When an employee quits work rather than follow the employer's instructions, her leaving is without good cause attributable to the employer. The claimant left work rather than providing documentation to the employer, appearing for work, or calling the employer. Her leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

The next issue is whether the claimant was able and available for work. For the following reasons the administrative law judge concludes she is not.

Iowa Admin. Code r. 871-24.23(1) provides:

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.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When an employee is ill and unable to perform work due to that illness, she is considered to be

unavailable for work. The claimant does not feel able to work after her physician returned her to work on September 1, 2018. She continued to feel unable to work through October 3, 2018.

The claimant filed for unemployment insurance benefits with an effective date of November 18, 2018. She has not received a note from her doctor releasing her to return to work. The claimant is disqualified from receiving unemployment insurance benefits beginning November 18, 2018, due to her unavailability for work. Should the claimant obtain documentation from her physician that she is able to return to work, she should provide it to the agency immediately.

**DECISION:**

The representative's November 30, 2018, decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible. The claimant is not able and available for work at this time. Should the claimant obtain documentation from her physician that she is able to return to work, she should provide it to the agency immediately.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs