

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARCIA R MOORE
Claimant

TEAM STAFFING SOLUTIONS INC
Employer

APPEAL NO. 14A-UI-05367-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/04/14
Claimant: Appellant (2)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated May 22, 2014, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on June 13, 2014. Claimant participated personally, and was represented by attorney Elizabeth Norris. Employer participated by Sarah Fiedler. Claimant's Exhibits A-H were admitted into evidence.

ISSUES:

Whether claimant was a voluntary quit from her employment.

Whether claimant is able, available, and earnestly and actively seeking work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on January 9, 2014 as the result of a non-work-related injury. Employer states that claimant quit work soon after her accident, while claimant states that she never did quit.

Claimant brought forth documentation showing that employer "had to end her assignment due to a non-work related injury." (Claimant's A). Claimant received this letter less than a week after her injury. Claimant also brought forth documentation showing that she repeatedly went to the doctor seeing if she could be released to return to work. (Claimant's B-H). Claimant was finally released to return to light-duty work on May 5, 2014. Upon claimant's release she did go back to employer, who denied her work stating their policy that until a person is unconditionally released, they cannot return to the job. Claimant has additionally sought employment throughout the area since the date of her release to do light-duty work.

Employer offered hearsay testimony that claimant voluntarily quit her job a few days after her accident. Employer further stated that once claimant is completely healed with no doctor's restriction, that they would look forward to having her return to work.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Code § 96.5(1)e 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:

e. The individual left employment upon the advice of a licensed and practicing physician, for the sole purpose of taking a member of the individual's family to a place having a different climate, during which time the individual shall be deemed unavailable for work, and notwithstanding during such absence the individual secures temporary employment, and returned to the individual's regular employer and offered the individual's services and the individual's regular work or comparable work was not available, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.22(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.

Iowa Admin. Code r. 871-24.22(2)(1)(2) provides:

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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.

The court does not find employer's statement credible that claimant requested to quit upon receiving her injury that was not work related. Claimant gave no statements that she had voluntarily quit, and employer's representative who testified could only give a hearsay statement. At best, claimant could be seen as being on a leave of absence until she was released by her doctor to return to work on a limited basis. If this matter is seen as a leave of absence, then claimant is eligible for unemployment benefits upon her being able and available for work.

Claimant provided documentation that she was cleared by her doctor for light duty work on May 5, 2014. Since that date claimant has consistently and regularly sought out employment within her physical limitations.

DECISION:

The decision of the representative dated May 22, 2014, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements. Additionally claimant is seen as being able and available for work as of May 5, 2014. It is from that date that claimant is eligible for unemployment benefits.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/css