

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHERYL A STEPHENS**  
Claimant

**APPEAL NO. 08A-UI-06857-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BLACK HAWK COUNTY**  
Employer

**OC: 06/22/08 R: 03**  
**Claimant: Respondent (2-R)**

Section 96.5-1 - Voluntary Quit  
Section 96.4-3 - Able to and Available for Work  
Section 96.3-7 - Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated July 25, 2008, reference 01, that concluded claimant was forced to resign or be discharged and her quitting was caused by the employer. A telephone hearing was held on August 12, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Ralph Stephens. June Watkins participated in the hearing on behalf of the employer with witnesses, Sue Gardner and Judy Gifford. Exhibits One through Four were admitted into evidence at the hearing.

**ISSUES:**

Did the claimant voluntarily quit employment without good cause attributable to the employer?  
Was the claimant able to and available for work?  
Was the claimant overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant worked for the employer as a home care aide from December 27, 1993, to March 31, 2008. Sue Gardner was the claimant's supervisor.

The claimant was on an approved medical leave of absence starting February 20, 2008, and was excused from working by her doctor. Her leave was to end on approximately April 8, 2008, but the claimant had the right to extend the leave. She came in for some paid training on March 31, 2008.

While she was on medical leave, the claimant was diagnosed with hepatitis C. She had a follow-up visit with her doctor on April 2, 2008, and was diagnosed with cirrhosis of the liver. She was emotionally upset by the diagnosis and the fact that her doctor did not talk her about the diagnosis. She went in to the employer's office to talk to her supervisor, Sue Gardner. She told Gardner about the diagnosis and she would not be returning to work for some time due to the treatment she would need. She was unsure what to do. Gardner asked whether it would be

better if she resigned from her job rather than coming back to work. The claimant responded that she supposed it would be better to resign. The claimant decided to resign from her job due to medical reasons and submitted her resignation in writing. No one with the employer informed the claimant that she was discharged or would be discharged if she did not resign.

The claimant was referred to a doctor in Iowa City and reported for an exam at the end of April 2008. The doctor advised the claimant that she could work without restrictions even while taking the medication for her conditions. As of the date of the hearing, the claimant has not offered to return to work for the employer.

The claimant filed a new claim for unemployment insurance benefits with an effective date of June 22, 2008. The claimant has received \$984.00 in benefits through August 2, 2008.

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

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a. The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. There is no credible evidence that anyone with the employer informed the claimant that she was discharged or would be discharged if she did not resign. The claimant's husband testified that Gardner terminated the claimant, but the claimant's own testimony does not support this. I believe that Gardner asked whether it would be better if the claimant resigned from her job. This falls far short of a demand that the claimant resign or that she would be fired if she did not resign. The claimant voluntarily quit employment. The question is whether she quit for good cause. There is no evidence that the claimant's medical condition was caused by or aggravated by her job.

The unemployment insurance law provides that individual is qualified to receive benefits if she: (1) left employment because of illness, injury or pregnancy with the advice of a licensed and practicing physician, (2) notified the employer that he needed to be absent because of the illness or injury, and (3) offered to return to work for the employer when recovery was certified by a licensed and practicing physician, but her regular work or comparable suitable work was not available. Iowa Code section 96.5-1-d.

The evidence establishes that the claimant left work due to illness and notified the employer of her need to be off work. She testified that her doctor in Iowa City released her to return to work without restrictions. The claimant, however, has not offered to return to work for the employer. She, therefore, is disqualified from receiving benefits until: (1) she has been paid wages equal to ten times her weekly benefit amount or (2) she reapplies for benefits and shows: (a) she has presented a medical statement to her employer that she is released to return to work and (b) has offered to return to work but no suitable work is available.

The next issue is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code section 96.4-3. The preponderance of the evidence establishes she is able to and available for work.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits

on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

**DECISION:**

The unemployment insurance decision dated July 25, 2008, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages equal to ten times her weekly benefit amount or she reapplies for benefits and shows she has offered to return to work for the employer but no suitable work was available. She is able to and available for work. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs