

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALEXIS M SALEM

Claimant

APPEAL NO. 16A-UI-01383-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GREAT WESTERN BANK

Employer

OC: 01/10/16

Claimant: Appellant (1)

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

Section 96.4.3 – Able and Available

STATEMENT OF THE CASE:

Alexis Salem (claimant) appealed a representative's February 3, 2016, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Great Western Bank (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 26, 2016. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from April 14, 2015, to January 6, 2016, as a full-time lead teller. The claimant had some complications with her pregnancy on January 6, 2016, and went to the hospital. She was released later that day. The claimant notified her employer that her physician placed her on bed rest until she healed. The claimant sent her a picture of the doctor's note that said the claimant was released to return to work on January 6, 2016, with a ten-pound weight restriction and time for sitting at work. The note did not indicate the claimant was on bed rest. The employer persistently asked the claimant questions about when she would be returning. The claimant told the employer she had not stopped bleeding. On January 12, 2016, the claimant sent a letter of resignation to the employer. She resigned because she thought it would be better for her pregnancy. Her physician did not tell her she had to quit work. On January 21, 2016, the claimant was able to return to work. On January 29, 2016, the claimant was released to return to work without restrictions.

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 § 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.

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). A "recovery" under Iowa Code Section 96.5-1-d means a complete recovery without restriction. Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa App. 1985).

The claimant quit work due to pregnancy but not under the advice of her physician. The employer did not consent to her leaving. The claimant has failed to provide the employer with certification that she has recovered. In addition the claimant has failed to offer her services to the employer. The claimant has failed to meet the requirements of the statute and, therefore, is not eligible to receive unemployment insurance benefits.

The next issue is whether the claimant was able and available for work.

Iowa Admin. Code r. 871-24.23(1) and (16) 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.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

When an employee requests and is granted time off or is ill, she is considered to be unavailable for work. The claimant requested time off and the employer granted her request until the claimant quit work. The change in hours was initiated by the claimant. She is considered to be unavailable for work from January 10 to 23, 2016. The claimant is disqualified from receiving unemployment insurance benefits from January 10 to 23, 2016, due to her unavailability for work.

DECISION:

The representative's February 3, 2016, decision (reference 01) is affirmed. The claimant is disqualified from receiving unemployment insurance benefits from January 10 to 23, 2016, due to her unavailability for work. 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.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs