

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAMELA M FINKEN
Claimant

APPEAL NO. 07A-UI-07930-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GENESIS HEALTH SYSTEM
Employer

**OC: 07/08/07 R: 04
Claimant: Respondent (1)**

Section 96.5-1-d- Leaving Work for Medical Reasons

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated August 9, 2007, reference 01, that concluded the claimant was laid off due to lack of work. A telephone hearing was held on September 4, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Craig Fields participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant provided suitable or comparable work after returning from a medical leave?

FINDINGS OF FACT:

The claimant worked as a medical assistant for the employer from February 20, 1996, to October 22, 2006. Her work location was in Bettendorf, Iowa, about three miles from the claimant's residence in Davenport. For the last nine years of her employment, she worked as an internal medicine medical assistant. After October 22, 2006, she was off work on medical leave based on her doctor's advice because of a medical problem with her knee.

Under the employer's leave policies, an individual is entitled to twelve weeks of leave under the Family and Medical Leave Act (FMLA). If individuals are released to return to work during that time period, they are restored to their former jobs. After the twelve weeks of FMLA, an employee is entitled to another three months of leave for a total of six months. If individuals are released to return to work during that time period, they are not restored to their former jobs but instead are required to go online to apply for available openings. They are not guaranteed that they will get the jobs they apply for. The claimant believed, however, that she would be restored to her regular job when she was released by her doctor.

The claimant was not released to return to work during her FMLA leave that ended in late January. She was released to return to work as of February 19, 2007. She contacted the office manager and was informed that she could not return to her former job and would have to go online to see if there were any openings available to apply for. She was not offered any work for the employer at that time. She checked online, but the only medical assistant position

available at that time was in Moline. The claimant did not apply for the position because she would have to drive across the Mississippi River Bridge to get to work each day, and she has a serious phobia about driving across bridges.

The claimant has not been offered any positions by the employer. She has not applied for any openings because the openings she has seen online have not been in internal medicine. When the claimant had not returned to work by April 28, 2007, the end of the six months, her employment was terminated.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides that an 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 she 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 question that has to be answered here is whether the claimant qualifies to receive unemployment insurance benefits based on the reasons for her separation from employment. The claimant has satisfied all the requirements of Iowa Code section 96.5-1-d. At the point the claimant was released to return to work, she offered to return to work. Her regular work was not available. The claimant at that point was not offered any other work either. She was told to find a different job online and apply for an opening. She was not promised that she would be hired if she applied. The statute does not disqualify a claimant for failing to apply for a job unless it is a position she is directed to apply for by Iowa Workforce Development. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

DECISION:

The unemployment insurance decision dated August 9, 2007, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs