

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**LAURA L FRIEST
1722 E 32ND CT
DES MOINES IA 50317**

**CENTRAL IOWA HOSPITAL
CORPORATION
c/o HUMAN RESOURCES
1313 HIGH ST STE 111
DES MOINES IA 50309-3119**

**Appeal Number: 04A-UI-09698-RT
OC: 08-15-04 R: 02
Claimant: Appellant (5)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting
Section 96.4-3 – Required Findings (Able and Available for Work)

STATEMENT OF THE CASE:

The claimant, Laura L. Friest, filed a timely appeal from an unemployment insurance decision dated September 1, 2004, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on September 30, 2004, with the claimant participating. Amy Williams, Human Resources Business Partner, and Ruth Eichenseer, Disability Coordinator, participated in the hearing for the employer, Central Iowa Hospital Corporation. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time customer advocate from August 19, 1999 until she separated from her employment on August 10, 2004. The claimant suffered a medical condition unrelated to her employment. She was off work due to that medical condition from January 29, 2004 to April 18, 2004 and while off work was on short-term disability. She was released to work half days and returned to work and worked half days on April 19, 20, 21, 22, 23, and 28, 2004. On April 29, 2004, the claimant went back off work and again went on short-term disability for the same medical condition. This continued through July 28, 2004. The claimant was released to work without any restrictions on July 29, 2004. The claimant worked one full day on August 2, 2004 and then went back off work and on short-term disability once again. However, the claimant's short-term disability expired August 10, 2004. When the claimant's short-term disability ended, it was necessary for the claimant to be terminated from her employment. The claimant was fully aware of this. When the claimant did not return to work on August 11, 2004, the employer sent the claimant a letter indicating to her that her short-term disability had ended on August 10, 2004 and that she was eligible to apply for long-term disability. The letter indicated that the claimant would have to be terminated effective August 10, 2004 because she had not returned to work. The letter further indicated that the claimant could seek employment again with the employer when she was released to work by her physician without restrictions. The employer also included in the letter the employer's part of an application for long-term disability. The employer is unaware whether the claimant completed that and finished the necessary work for a long-term disability. The claimant was released to return to work by her physician on August 31, 2004 but she did not return to the employer and offer to go back to work. Since August 31, 2004, the claimant has placed no restrictions on her ability or availability to work and is earnestly and actively seeking work by making at least two in-person job contacts each week.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from the employment was a disqualifying event. It was.
2. Whether the claimant is ineligible to receive unemployment insurance benefits because at relevant times she was not able, available, and earnestly and actively seeking work. The claimant is also ineligible to receive unemployment insurance benefits for this reason through benefit week ending September 4, 2004.

Iowa Code section 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.

871 IAC 24.26(6)a provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

The first issue to be resolved is the character of the separation. Both parties seem to equivocate on the exact character of the separation. The employer seemed to advocate that the claimant was unavailable for work and, therefore, quit when she could not return to work. The claimant seems to argue that she was discharged when she did not return to work. Under these circumstances, the administrative law judge is constrained to conclude that the claimant, in effect, voluntarily quit on August 10, 2004 when she used up all of her short-term disability and was unable to come to work. The employer provides short-term disability for its employees and the claimant began drawing short-term disability on January 29, 2004 and continued throughout most of the period until she exhausted her short-term disability on August 10, 2004. At that time the employer's rules require that one be terminated. The claimant was fully aware of these rules. When the claimant exhausted her short-term disability, she claims she was not able to work and could not return to work. The administrative law judge is constrained to conclude that in this situation, under the facts here, the claimant left her employment voluntarily on that occasion. The administrative law judge notes that the claimant was released to work half days on April 18, 2004 but she only worked six half days before returning to short-term disability and then was again released on July 28, 2004 with no restrictions but worked only one day and then went back on short-term disability again. There is no evidence that the claimant's medical condition was caused by her employment. It may well be that the claimant did not voluntarily quit in the general sense of that term but the administrative law judge must conclude here that the claimant voluntarily quit her employment as opposed to being discharged because the employer had no option. The claimant could not or would not or did not return to work and the employer cannot keep a position open indefinitely. Employment Security Law is not designed to provide health and disability insurance and only those employees who experience illness induced separations that can fairly be attributable to the employer are properly eligible for unemployment insurance benefits. White v. Employment Appeal Board, 487 N.W.2d 342, 345 (Iowa 1992). Accordingly, the administrative law judge concludes that the claimant effectively left her employment voluntarily on August 10, 2004. The issue then becomes whether the claimant left her employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that she has left her employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. The evidence establishes that the claimant left her employment because of an illness unrelated to her employment. She was apparently prohibited from returning to work. The claimant recovered, or at least was released by her physician to return to work without restrictions on August 31, 2004. However, the claimant has not returned to the employer and offered to perform services to the employer and no suitable comparable work was available. It may well be that the claimant would not ordinarily have to return to the employer and offer to go back to work since she had been terminated but the administrative law judge concludes that the

claimant would need to do so in this case because the letter from the employer dated August 11, 2004, clearly instructs the claimant or invites the claimant to seek employment when she is released by her physician. The claimant did not do so. Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily without good cause attributable to the employer and, as a consequence, she is disqualified to receive unemployment insurance benefits until or unless she requalifies for such benefits or she returns to the employer and documents that she has recovered and offers to perform services for the employer and no suitable comparable work is available. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits or returns to the employer and offers to go back to work and no comparable or suitable work is available.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(1)a 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

The administrative law judge concludes that the claimant has the burden of proof to show that she is able, available, and earnestly and actively seeking work under Iowa Code Section 96.4-3 or is otherwise excused. New Homestead v. Iowa Department of Job Service, 322 N.W.2d 269 (Iowa 1982). The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she is, or was, either temporarily unemployed or partially unemployed under Iowa Code section 96.19(38)(b)(c) so as to be excused from requirements that she be able, available, and earnestly and actively seeking work. The administrative law judge is also constrained to conclude that the claimant was not able and available for work through August 31, 2004 or through benefit week ending

September 4, 2004. The claimant testified that she was not released by her physician without restrictions until August 31, 2004. The administrative law judge concludes that, therefore, the claimant was not able and available for work through August 31, 2004 and would be ineligible to receive unemployment insurance benefits for that period or through benefit week ending September 4, 2004. The claimant would be eligible to receive unemployment insurance benefits beginning with benefit week ending September 11, 2004 because she was able, available, and earnestly and actively seeking work from and after September 1, 2004 but as noted above, the claimant is disqualified to receive unemployment insurance benefits.

DECISION:

The representative's decision of September 1, 2004, reference 01, is modified. The claimant, Laura L. Friest, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits or returns to the employer and demonstrates that she has recovered from her illness and is released without restrictions and offers to perform services for the employer and her regular work or comparable suitable work is not available, because she left her employment voluntarily without good cause attributable to the employer for a non employment-related illness. The claimant is also ineligible to receive unemployment insurance benefits through benefit week ending September 4, 2004 because she was not able and available for work. Thereafter, beginning with benefit week ending with September 11, 2004 and continuing, the claimant is able, available, and earnestly and actively seeking work.

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