

**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**

**JANICE G HILL  
18245 COLLRIDGE DR  
TAMPA FL 33647**

**DES MOINES INDEPENDENT  
COMMUNITY SCHOOL DISTRICT  
ATTN BUSINESS/FINANCE  
1801 – 16<sup>TH</sup> ST  
DES MOINES IA 50314-1902**

**Appeal Number: 05A-UI-06771-RT  
OC: 06-05-05 R: 02  
Claimant: Appellant (1)**

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(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, Janice G. Hill, filed a timely appeal from an unemployment insurance decision dated June 22, 2005, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on July 19, 2005, with the claimant participating. Cathy McKay, Risk Manager, participated in the hearing for the employer, Des Moines Independent Community School District. 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 fourth and fifth grade teacher from August 21, 1995, until she voluntarily quit effective January 3, 2005. At that time the claimant informed the employer of her resignation, both orally and in writing by fax. The claimant quit in order to move to Chicago, Illinois, to take care of her daughter who was having back surgery. The claimant's daughter had an 18-month old child, and the claimant needed to move to Chicago to help take care of the child and her daughter. The claimant was in Chicago until the end of March 2005. At that time the claimant returned to Des Moines briefly to pack up her belongings and then moved to Tampa, Florida. The claimant has never returned to the employer and never offered to go back to work for the employer.

The claimant filed for unemployment insurance benefits effective June 5, 2005. At that time, and thereafter, the claimant had placed no physical restrictions or training restrictions on her ability to work. The claimant had also placed no restrictions on times or days when she could not work concerning her availability for work. The claimant had been conducting an earnest and active search for work and found work, and will begin August 1, 2005. This employment is in Tampa, Florida.

#### REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from 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 not ineligible to receive unemployment insurance benefits for these reasons.

Iowa Code section 96.5-1-c 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:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

871 IAC 24.25(1)(2)(20)(23) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence

that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

- (1) The claimant's lack of transportation to the work site unless the employer had agreed to furnish transportation.
- (2) The claimant moved to a different locality.
- (20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.
- (23) The claimant left voluntarily due to family responsibilities or serious family needs.

The parties agree, and the administrative law judge concludes, that the claimant left her employment voluntarily effective January 3, 2005. 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 good cause attributable to the employer. Both witnesses were very credible. The claimant credibly testified that she left her employment initially to take care of her daughter in Chicago, Illinois who was having back surgery and had a child 18 months old. The claimant was there until the end of March 2005. The claimant then returned to Des Moines, but only briefly to pack up her belongings and move to Florida. The claimant did not return to the employer and offer to go back to work. Therefore, the administrative law judge concludes that the claimant is disqualified to receive unemployment insurance benefits as a result of leaving her employment to take care of a family member. The administrative law judge further notes that leaving work voluntarily for compelling personal reasons when the period of absence exceeds 10 working days, as it did here, or because of family responsibilities or serious family needs, is not good cause attributable to the employer. When the claimant's daughter had recovered, the claimant returned to Des Moines briefly to pack up and move to Florida but did not return to the employer. Leaving work voluntarily to move to a different locality is also not good cause attributable to the employer. 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. The administrative law judge is not without sympathy for the claimant but must conclude that the claimant left her employment for no good cause attributable to the employer. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

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".

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 met her burden of proof to demonstrate by a preponderance of the evidence that at relevant times from and after June 5, 2005, she was and is able, available, and earnestly and actively seeking work. The administrative law judge notes that while caring for her daughter in Chicago through the end of March 2005 and then while moving to Tampa, Florida, the claimant did not apply for any unemployment insurance benefits, because she was not available for work. The claimant applied for unemployment insurance benefits effective June 5, 2005. The claimant credibly testified that from that date, she has placed no restrictions on her ability to work nor has she placed any restriction on her availability for work and that she was earnestly and actively seeking work which resulted in employment to begin August 1, 2005. There is no evidence to the contrary. Accordingly, the administrative law judge concludes that at relevant times, the claimant was able, available, and earnestly and actively seeking work and is not ineligible to receive unemployment insurance benefits. However, as noted above, the administrative law judge concludes that the claimant is disqualified to receive unemployment insurance benefits because she left her employment voluntarily without good cause attributable to the employer.

#### DECISION:

The representative's decision of June 22, 2005, reference 01, is affirmed. The claimant, Janice G. Hill, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits, because she left her employment voluntarily without good cause attributable to the employer. The claimant is able, available, and earnestly and actively seeking work.

pjs/kjw