IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ANGELA D WORRALL
Claimant

BROWNELLS INCORPORATED
Employer

APPEAL NO. 11A-UI-14880-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/23/11
Claimant: Respondent (1)

Section 96.5(2)(a) – Discharge
Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 14, 2011, reference 01, decision that allowed benefits based on an Agency conclusion that the employer had discharged the claimant for no disqualifying reason. After due notice was issued, a hearing was held on January 9, 2012. Claimant Angela Worrall participated. Rachel Daly, human resources manager, represented the employer. Exhibits One, Two, and A through D were received into evidence. The administrative law judge took official notice of the Agency's administrative record (DBRO) of benefits disbursed to the claimant and of the October 31, 2011, reference 02, decision that allowed department-approved training status effective November 20, 2011.

ISSUES:

Whether the claimant separated from the employment for a reason that makes her ineligible for unemployment insurance benefits.

Whether the claimant has been able to work and available for work since establishing her claim for benefits.

Whether the claimant is exempted from the work search and availability requirement by means of being approved for department-approved training.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Angela Worrall was employed by Brownells Incorporated as a full-time "rebuyer" from 1999 and last performed work for the employer on July 13, 2011. At that time, Ms. Worrall commenced an approved leave of absence that was based on her doctor placing her on bed rest for the duration of her pregnancy. Ms. Worrall applied for and the employer approved 12 weeks of leave under the Family and Medical Leave Act. In addition, the employer's third-party short-term disability administrator approved short-term disability benefits that started August 8, 2011.

On September 15, 2011, Rachel Daly, who was then the staffing manager, telephoned Ms. Worrell to discuss that the 12-week leave period would end on October 17, 2011. During the call, Ms. Daly told Ms. Worrell that the employment would be ended if Ms. Worrell did not return to work by October 17, 2011. The employer's written leave policy indicated that employees would be deemed to have voluntarily quit if they did not return to work by the end of the 12-week family and medical leave period. Ms. Daly knew at the time of the call that Ms. Worrall would likely not be released to return to work by October 17, 2011. Ms. Daly told Ms. Worrall that she would have to submit an application if she wanted to return to the employment. Ms. Daly had also mailed a letter dated October 17, 2011 to Ms. Worrall with similar information.

Ms. Worrall's baby was delivered prematurely by caesarian section on October 9, 2011. Ms. Worrall was discharged from the hospital on October 13. Ms. Worrall was readmitted to the hospital on October 15 and later discharged from the hospital on October 17. Ms. Worrall had not been released to return to work. Based on Ms. Daly's statements during the September 15, 2011, Ms. Worrall concluded the employer had ended her employment. At some later point, Ms. Worrall spoke with Meg Ruzek, human resources director, and mentioned she would not be returning to the employment.

Even though the employer had ended the employment pursuant to its policy, Ms. Worrall continued to receive short-term disability benefits through the employer's third-party administrator. Ms. Worrall did not receive any short-term disability benefits beyond November 19, 2011.

Ms. Worrall had established a claim for unemployment insurance benefits that was effective October 23, 2011. On October 23, 2011, a Workforce Development representative entered a reference 02 decision that approved Ms. Worrall for department-approved training for the period of November 20, 2011 through February 25, 2012. Ms. Worrall was not released to return to work until November 18, 2011, at which time she was released to return to work without restrictions. Ms. Worrall did not collect benefits on the claim until the week that ended November 26, 2011, after she had been released to return to work without restrictions. Ms. Worrall continues to make appropriate progress with her department approved training.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113), provides as follows:

> All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.
>
> a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory–taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.
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> b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The facts of this case are similar to a case just decided by the Iowa Court of Appeals. Though the appellate court's opinion is as yet unpublished in the Northwestern Reporter, the opinion is available at the Iowa Judicial Branch website: www.iowacourts.gov. The case is Prairie Ridge Addiction Treatment Services vs. Sandra K. Jackson and Employment Appeal Board, No. 1-874 / 11-0784, Filed January 19, 2012. The appellate court's opinion provides guidance in the present matter. In the appellate case, the claimant had commenced an approved leave of absence. As in the present case, the employer subsequently notified the claimant that the employment would be deemed ended because the claimant had not been released by a doctor to return to work by the date the employer expected the claimant to return. The court ruled that the separation was discharge, not a voluntary quit. The court further ruled that claimant since the claimant had not voluntarily quit the employment, the claimant was under no obligation to return to the employer and offer her services once released by a doctor.

The evidence in the present case fails to establish a voluntary quit. The evidence indicates instead that the employer discharged Ms. Worrall from the employment effective October 17, 2011 because she had not yet been released by a doctor to return to work after having been on an approved pregnancy-related leave of absence. The employer initiated the separation from the employment through the telephone call on September 15, 2011, telling Ms. Worrall that the employment would be ended on October 17, 2011 if she were unable to return by that date. Ms. Worrall reasonably concluded, based on that phone call, that the employer indeed ended the employment effective October 17, 2011. Ms. Worrell made no mention of not returning to the employment until after the employer had already ended the employment. The employer's written leave policy, which deemed failure to return within 12 weeks a voluntary quit, cannot trump the established unemployment insurance law that deems the separation a discharge. Because the discharge was not based on misconduct in connection with the employment, the discharge would not disqualify Ms. Worrell for unemployment insurance benefits. In addition, the employer's account may be charged for benefits paid to Ms. Worrall. Because employer terminated the employment relationship, Ms. Worrall was under no obligation to return to the employer at some later date to offer her services.

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 and (2) provide:

> 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.
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> (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.
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> 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.
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> (2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The weight of the evidence indicates that Ms. Worrall did not meet the work ability and availability requirements of the law from October 23, 2011 through the benefit week that ended November 19, 2011. Accordingly, Ms. Worrall would not be eligible for benefits for those weeks. Ms. Worrall did not claim benefits for those weeks Effective Friday, November 18, 2011, Ms. Worrall was released to return to work without restrictions. Though the release came too late in the week for Ms. Worrall to be considered able and available for work during the week that ended November 19, 2011, the release indicates that Ms. Worrall met the work *ability* requirement effective November 20, 2011.

Iowa Code section 96.4(6)(a) provides:

> 6. a. An otherwise eligible individual shall not be denied benefits for any week because the individual is in training with the approval of the director, nor shall the individual be denied benefits with respect to any week in which the individual is in training with the approval of the director by reason of the application of the provision in subsection 3 of this section relating to availability for work, and an active search for work or the provision

of section 96.5, subsection 3, relating to failure to apply for or a refusal to accept suitable work. However, an employer's account shall not be charged with benefits so paid.

On October 31, 2011, Ms. Worrall was approved for department-approved training for the period of November 20, 2011 through February 25, 2011. This relieved Ms. Worrall of having to search for work or otherwise make herself available for work, so long as she continued to make appropriate progress in the department approved training. It also meant that no employer would be charged for benefits so long as Ms. Worrall continued to be approved for department approved training. See 871 IAC 23.43(7). Ms. Worrall has continued to make appropriate progress in her department approved training.

DECISION:

The Agency representative's November 14, 2011, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason effective October 17, 2011. The discharge did not disqualify the claimant for unemployment insurance benefits. The claimant was eligible for benefits effective October 23, 2011, provided she met all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

The claimant was not able and available for work during the period of October 23, 2011 through the benefit week that ended November 19 2011 and, for these reasons, was not eligible for benefits for that period.

Effective the benefit week that started November 20, 2011, the claimant met the work ability requirements of the law. Effective the benefit week that started November 20, 2011, the claimant was approved for department-approved training and thereby was relieved of searching for or accepting employment so long as she continued to make appropriate progress in the department approved training. The claimant is eligible for benefits effective November 20, 2011, provided she is otherwise eligible. The employer's account will not be charged for benefits paid to the claimant for the period during which she participates in department approved training.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw