

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**MORGAN B COPELAND**  
Claimant

**MERCY MEDICAL CENTER**  
Employer

**APPEAL 15A-UI-10889-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/23/15  
Claimant: Appellant (1)**

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Iowa Code § 96.5(1)d – Voluntary Leaving/Illness or Injury  
871 IAC 24.25(35) – Separation Due to Illness or Injury  
Iowa Code § 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the September 17, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 13, 2015. Claimant participated. Employer participated through Laura Dooley, Director of Human Resources; (representative) Christine Gust, Human Resources Generalist; and Meredith Hansen, Patient Services Manager in Food and Nutrition. Employer's Exhibit One was entered and received into the record.

**ISSUES:**

Is the claimant able to and available for work?

Is the claimant temporarily separated from her employment?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a patient nutrition assistant beginning on November 19, 2009 through date of hearing as she remains an employee. The claimant last worked on August 25, 2015. She is pregnant and her obstetrician has her on work restrictions that prohibit her from lifting or pushing over ten pounds. Her job description makes clear that an essential physical demand for an employee is the ability to exert 20 to 50 pound of force occasionally and or 10 to 15 pounds of force frequently. (Employer's Exhibit One) The claimant only has the work restrictions due to her pregnancy, not for any other medical condition. The employer is unable to accommodate the claimant's current work restrictions.

The claimant did not work enough hours to be eligible for leave under the Family Medical Leave Act (FMLA) but did apply for and receive leave under the employer's medical leave of absence policy.

Approximately three years ago the employer redesigned the call center job so that the employee who took phone calls would also be working as a patient nutrition assistant. The change was

made for business needs. Thus, while the claimant was accommodated four years ago when she was pregnant, the employer no longer has that position available.

The claimant's anticipated delivery date in mid-December and she will not be released to return back to work until sometime after she delivers her baby.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant is temporarily separated from her employment 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.

Iowa Admin. Code r. 871-24.25(35) 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 § 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 § 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

The claimant is off work due to her pregnancy. She has not delivered her baby and fully recovered and offered to return to work. She is temporarily separate without good cause attributable to the employer.

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

Iowa Code § 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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(2)(1)(2) 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.

(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.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

Iowa Admin. Code r. 871-24.23(10) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

The claimant requested and was given a leave of absence to recover from her pregnancy and delivery. Claimant has not been released to return to full work duties and employer is not obligated to accommodate a non-work-related medical condition, despite the fact that they have done so in the past. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

**DECISION:**

The September 17, 2015, (reference 01) decision is affirmed. The claimant is not able to and available for work effective August 25, 2015. Claimant's separation was without good cause attributable to the employer. Benefits are withheld until such time as claimant works in and has been paid wages equal to ten times her weekly benefit amount, provided she is otherwise eligible or until such time as claimant obtains a full release without restriction to return to regular duties, offers services to the employer, and the employer has no comparable, suitable work available.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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