

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**NICHOLE MASSEY**  
Claimant

**ANNETT HOLDINGS INC**  
Employer

**APPEAL 21A-UI-20510-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/25/21  
Claimant: Appellant (1)**

Iowa Code § 96.5(1)d – Non-Work-Related Medical  
Iowa Code 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

The claimant, Nichole Massey, filed an appeal from the September 8, 2021, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on November 4, 2021. The claimant participated and testified. The employer participated through Vice President of Operations Tim Heim and Operations Manager Josh Kintz. Both parties waived notice regarding Iowa Code 96.4(3). Exhibits A, B, 1, 2, and 3 were received into the record. Official notice was taken of the agency records.

**ISSUE:**

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant was employed full-time as a fleet manager from October 28, 2019, and was separated from employment on August 27, 2020, when she was discharged. The claimant worked a set schedule from 7:00 a.m. to 4:30 p.m. Monday through Friday. The claimant's immediate supervisor was Operations Manager Josh Kintz. The employer provided a copy of the claimant's job description. (Exhibit 3)

In March 2020, the claimant contracted a respiratory illness from working at the employer's facility. She was instructed to quarantine because Covid19 testing was limited at the time. The claimant provided a copy of the doctor's note. (Exhibit A)

The claimant continued to work from home until July 16, 2021. Around that time, the claimant began experiencing symptoms of Covid19. The claimant requested and was granted a leave of absence from July 16, 2021 to August 17, 2020. Over this period of time, the claimant had extensive heart and lung problems.

The claimant did not receive any correspondence stating she had to return by a particular date. Nevertheless, the employer terminated the claimant on August 27, 2021 because she had not returned from leave per its leave policy. The employer provided a copy of its leave of absence without pay policy which states in pertinent part, "If the employee does not return within the 30 days and a request for extension, if any, has not been approved the employee's status will be terminated." (Exhibit 1) The employer provided the claimant's acknowledgement of the employee handbook on October 18, 2019.

On July 27, 2020, the claimant's physician said the claimant could not return to work for at least 10 weeks.

On August 3, 2021, the claimant sent a text message to Mr. Kintz asking him if she was still with the company. Mr. Kintz replied that he did not think anything had changed. The claimant relayed that she heard from a driver that she had been terminated. Mr. Kintz denied knowledge of her separating from employment at that time. The claimant provided copies of these text messages. (Exhibit B)

At the end of October 2021, the claimant was released to return to work part-time up to 30 hours per week by her physician, if symptoms had not worsened.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

Iowa Code section 96.5(1)d provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Where an employee did not voluntarily quit but was terminated while absent under medical care, the employee is allowed benefits and is not required to return to the employer and offer services pursuant to the subsection d exception of Iowa Code section 96.5(1). *Prairie Ridge Addiction Treatment Services v. Jackson and Employment Appeal Board*, 810 N.W.2d 532 (Iowa Ct. App. 2012).

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). A claimant is not disqualified for leaving

employment if he or she (1) left employment by reason of illness, injury or pregnancy; (2) on the advice of a licensed and practicing physician; (3) and immediately notified the employer or the employer consented to the absence; (4) and when certified as recovered by a physician, the individual returned to the employer and offered services but the regular or comparable suitable work was not available. *Area Residential Care, Inc. v. Iowa Department of Job Service*, 323 N.W.2d 257 (Iowa 1982). A “recovery” under Iowa Code Section 96.5-1-d means a complete recovery without restriction. *Hedges v. Iowa Department of Job Service*, 368 N.W.2d 862 (Iowa App. 1985).

The claimant left work due to an injury under the advice of her physician. The employer consented to her leaving. The claimant has failed to provide the employer with certification that she has recovered. In addition the claimant has failed to offer her services to the employer. The claimant has failed to meet the requirements of the statute and, therefore, is not eligible to receive unemployment insurance benefits. The claimant may re-qualify by returning to the employer with an unconditional release. The claimant could then receive benefits if regular work or comparable suitable work was not available.

The next issue is whether the claimant was able and available for work. For the following reasons the administrative law judge concludes she is not.

Iowa Admin. Code r. 871-24.23(1) provides:

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

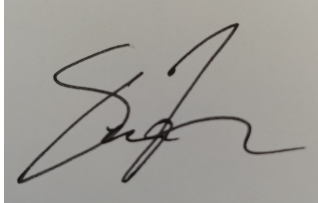
(1) An individual who is ill and presently not able to perform work due to illness.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

When an employee is ill and unable to perform work due to that illness, she is considered to be unavailable for work. Similarly, where an employee is subject to physician restrictions preventing them from work they are deemed unavailable to work. The claimant is considered unavailable for work until she obtained a conditional release on October 31, 2021. The claimant is disqualified from receiving unemployment insurance benefits from the week ending July 31, 2021 to the week ending October 30, 2021 due to being ill and/or being subject to physician restrictions.

**DECISION:**

The September 8, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. She was unavailable for work until October 31, 2021 due to doctor restrictions. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is written over a light gray rectangular background.

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Sean M. Nelson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 725-9067

November 16, 2021  
Decision Dated and Mailed

smn/kmj