

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JODY ROLFES**  
Claimant

**APPEAL NO: 12A-UI-00598-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CROSSMARK INC**  
Employer

**OC: 12-04-11**  
**Claimant: Appellant (2)**

Section 96.5(1)d – Voluntary Leaving/Illness or Injury  
871 IAC 24.26(6) – Separation Due to Illness or Injury

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the January 13, 2012, reference 03, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 15, 2012. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

**ISSUE:**

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time food sample demonstrator for Crossmark from March 1, 2009 to November 23, 2011. The claimant underwent non-work-related knee replacement surgery October 12, 2011, and the employer assured her it would hold her job for her. The claimant maintained contact with the employer throughout the time she was off work on doctor's orders and was continually reassured she would have a job when she was released to return to work. The claimant was released to return to work without restriction November 21, 2011, and on November 23, 2011, the employer notified the claimant it did not have any work available for her.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes no work was available to the claimant upon her release to return to work from a non-work related injury.

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.

Iowa Code section 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.

871 IAC 24.26(6)b provides:

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

b. Non-employment 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 claimant's return to the employer to offer services after the medical recovery evinces an intention to continue working. Therefore, the separation was attributable to a lack of work by the employer. Consequently, benefits are allowed.

**DECISION:**

The January 13, 2012, reference 03, decision is reversed. The claimant was laid off due to a lack of work when she was released to return to work without restriction and the employer had no comparable work available for her. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/kjw