

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAWN M MACE
Claimant

APPEAL NO. 12A-UI-05467-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CATHOLIC HEALTH INITIATIVES
Employer

OC: 07/03/11
Claimant: Appellant (1)

Section 96.5-1-d – Voluntary Quit for Medical Reasons
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Dawn Mace (claimant) appealed a representative's May 8, 2012 decision (reference 04) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Catholic Health Initiatives (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 4, 2012. The claimant participated personally. The employer participated by Terri Trepp, senior Business Partner. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason and whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on December 19, 2011, as a full-time nursing communications secretary. The claimant fractured her foot and had surgery on March 8, 2012. The claimant's physician advised her not to work from February 25 through April 22, 2012. On April 23, 2012, the claimant's physician released her to return to work with restrictions. The employer did not have work available for the claimant. The claimant has not been released to return to work without restrictions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

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.

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 after that release. The claimant has failed to meet the requirements of the statute and, therefore, is not eligible to receive unemployment insurance benefits.

The next issue is whether the claimant was able and available for work. For the following reasons the administrative law judge concludes she is.

871 IAC 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.

When an employee is ill and unable to perform work due to that illness, she is considered to be unavailable for work. The claimant was released to return to work with restrictions by her physician on April 23, 2012. She is considered to be available for work because her physician stated she was able and available for work. The claimant is not disqualified from receiving unemployment insurance benefits.

DECISION:

The representative's May 8, 2012 decision (reference 04) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are denied. The claimant is able and available for work.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs