

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARGARET T GLASER

Claimant

APPEAL NO. 07A-UI-06846-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EVANGELICAL FREE CHURCH HOME

Employer

**OC: 06/10/07 R: 02
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Margaret Glaser (claimant) appealed a representative's July 2, 2007 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she had voluntarily quit employment with Evangelical Free Church Home (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 30, 2007. The claimant participated personally. The employer did not provide a telephone number where it could be reached and, therefore, did not participate.

ISSUES:

The issue is whether the claimant is denied unemployment insurance benefits because she voluntarily quit work without good cause attributable to the employer. In addition 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 in October 2003, as a part-time dietary aide. As the claimant grew older she thought the work was too physically demanding. The employer assured the claimant it would not fight the claimant's application for unemployment insurance benefits. The claimant quit work on June 13, 2007. Continued work was available had the claimant not resigned.

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).

The claimant left work without the advice of a physician. The employer consented to her leaving. 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 never ill. She is considered to be available for work. The claimant is disqualified from receiving unemployment insurance benefits.

DECISION:

The representative's July 2, 2007 decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are denied.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs