

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NANCY B GARCIA
Claimant

APPEAL NO. 07A-UI-10987-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PALMER & COMPANY
Employer

**OC: 10/21/07 R: 01
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit
871 IAC 24.22(1)a – Able and Available for Work

STATEMENT OF THE CASE:

Nancy Garcia filed an appeal from a representative's decision dated November 19, 2007, reference 03, which denied benefits based upon her separation from Palmer & Company. After due notice was issued, a hearing was scheduled for and held by telephone on December 13, 2007. Ms. Garcia participated personally. The employer participated by Carissa Lewis, Human Resource Manager.

ISSUE:

The issue in this matter is whether the claimant quit for good cause attributable to the employer 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: The claimant worked for this employer from May 7, 2007 until October 19, 2007 when she left work on the advice of her physician due to pregnancy. The claimant was employed as a seasonal candy worker and was paid by the hour. The claimant was certified by her physician as unable to continue working due to her medical condition. At the time of hearing the claimant had not been released to return to work by her physician. Ms. Garcia anticipates being released when she next visits her physician at the end of December 2007. Work continued to be available to the claimant at the time of her leaving. The employer continues to employ its seasonal workers at the time of hearing. The claimant is eligible for re-hire in the future, provided that the employer has a position available for the claimant. The claimant is unable to work at the time of hearing as she has not been released by her physician.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes based upon the evidence in the record that the claimant left her employment for reasons that were not attributable to the employer and that the claimant has not been released to return to work by her physician. The claimant has not at the time of

hearing attempted to return to work after being certified by the physician as fully able to return to work.

871 IAC 24.26(6)b provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

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

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

871 IAC 24.22(1)a 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

For the reasons stated herein, the administrative law judge concludes that the claimant voluntarily left work for reasons that are not attributable to the employer and that the claimant is not available or medically able to return to work at the time of hearing.

DECISION:

The representative's decision dated November 19, 2007, reference 03, is hereby affirmed. The claimant voluntarily quit employment for reasons not attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided that the claimant satisfies all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs