

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROSE CRIPPEN

Claimant

APPEAL NO. 09A-UI-17020-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**WHITING COMMERCIAL
DEVELOPMENT CORPORATION**

Employer

**Original Claim: 04/05/09
Claimant: Respondent (2/R)**

Iowa Code § 96.4-3 - Able and Available for Work

Iowa Code § 96.5-1 - Voluntary Quit

Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Whiting Commercial Development Corporation (employer) appealed an unemployment insurance decision dated October 29, 2009, reference 02, which held that Rose Crippen (claimant) was medically able and available for work as of April 5, 2009. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 16, 2009. The claimant participated in the hearing. The employer participated through Katy Smith, Administrator. Lori Jenson, Director of Nursing, was present for the hearing but did not provide any testimony. Employer's Exhibits One through Three were admitted into evidence. The claimant had separated from the employer, but the separation issues were not listed in the hearing notice. Both parties waived notice so the issues of whether the claimant was discharged for misconduct and whether the claimant left without good cause could be addressed in this hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant was medically able and available to work as of April 5, 2009; and whether her voluntary separation from employment qualifies her to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired as a full-time certified nurse's aide on September 12, 2007. She was placed on non-work-related medical restrictions as of April 5, 2009 and could not perform the essential functions of her position. The employer could not accommodate the claimant and so she filed for unemployment insurance benefits. The claimant returned to work near the end of May 2009 after her restrictions were lifted.

She submitted a written resignation notice on June 3, 2009 advising the employer she was quitting effective June 12, 2009. The claimant quit her employment because she moved from Whiting, Iowa, to Council Bluffs, Iowa, with her boyfriend. The employer subsequently hired the claimant on a part-time, on-call basis, but she did not work until November 2009 and then it was only for a few days. She is still listed as an on-call employee.

The claimant filed a claim for unemployment insurance benefits effective April 5, 2009 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be determined is whether the claimant is able and available for work. For the following reasons, the administrative law judge concludes she was not.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

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.

The claimant has the burden of proof in establishing her ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). She was placed on work restrictions due to complications with her pregnancy and she could not carry out the essential functions of her position while on the restrictions. An employer has no duty to accommodate non-work-related medical restrictions and the employer was unable to accommodate the work restrictions.

The claimant does not meet the availability requirements of the law for the eight-week period ending May 30, 2009 and is not entitled to benefits during that same time frame.

The next issue to be determined is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

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.

871 IAC 24.25(2) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(2) The claimant moved to a different locality.

The claimant voluntarily quit her full-time employment as of June 12, 2009 because she moved to a different locality. The employer subsequently hired the claimant to work part-time, on an on-call basis. In order to work on a prn or on-call basis, the policy specifically states that employees must call the employer to see if there are any openings for that day. The claimant did not check in for work until November 2009. She feels that it should not be up to her to call the employer but that they should call her when they need someone.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has not satisfied that burden and benefits are denied.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated October 29, 2009, reference 02, is reversed. The claimant was not able to work and benefits are denied from April 5, 2009 through May 30, 2009. She voluntarily quit her employment on June 12, 2009 without good cause attributable to the employer. Benefits are withheld from the week ending June 20, 2009 until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw