

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JANET M KNAPP
Claimant

EXPRESS SERVICES INC
Employer

APPEAL 15A-UI-12438-H2-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/04/15
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 30, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 30, 2015. Claimant participated. Employer participated through Tiffany Westemeier, Front Office Coordinator.

ISSUE:

Did the claimant voluntarily quit her employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was last assigned to work at Legacy Manufacturing full-time as a labeler and packager beginning on June 15, 2015 through August 17, 2015. On August 18, the claimant called the employer, Express Services and indicated she had slipped in the tub or shower and could not work the rest of the week. The claimant was off work. On September 1, 2015, Ms. Westermeier contacted the claimant. She told the claimant that because she had been out for an injury she would need to provide a doctor's note that indicated she could come back to work. On September 11 one of the claimant's treating physicians, Dr. Segal, released the claimant to return to work effective September 11. The claimant had to be allowed to sit as needed, which was not an issue as the work she had performed at Legacy allowed her to sit or stand at will as needed.

The employer, Express Services had no additional work for the claimant as of September 11. The claimant was told that if additional work became available the employer would contact her. As of September 11 it is clear that the employer still intended to put the claimant back to work, if additional work was available. While the claimant was off work recovering, Legacy determined that they did not need her to return to work for them. No additional work was available for the claimant from Express Services for any other client.

The claimant made no claim for unemployment insurance benefits for the month of August or September 2015. The claimant did not file a claim for any unemployment insurance benefits until October 4, 2015. Since that time she has been available to work, but no work has been available for her from this employer, Express Services. The claimant did not voluntarily quit her assignment at Legacy, she took some time off to deal with a non-work related medical condition. At best her separation was a temporary period of recovery that the employer, Express Services agreed to. When the claimant recovered and offered to return to work, Express Services had no additional work for her.

REASONINGS AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes no work was available to the claimant effective October 4, 2015.

Iowa Code § 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 § 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. Nonemployment 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 notified the employer she needed to be off work to recover from a non-work related injury effective August 18, 2015. When she provided to the employer her note from Dr. Segal releasing her to return to work to work effective September 11, 2015, no additional work was available for her. The claimant was temporarily separated from the employer and

when she recovered and returned to offer her services, no additional work was available for her. Since the claimant did not file a weekly claim for benefits until the week ending October 10, 2015, the issue of any entitlement to unemployment insurance benefits in the months of August and September 2015 is moot. The claimant has not worked since October 4, 2015 simply because the employer has no more work available for her. Benefits are allowed, effective October 4, 2015, provided the claimant is otherwise eligible.

DECISION:

The October 30, 2015, reference 01, decision is reversed. Claimant was laid off due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs