

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

APRIL M UNDERWOOD
Claimant

APPEAL NO. 13A-UI-07188-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY CLINICS INC
Employer

OC: 05/26/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct
Section 96.5-1 – Voluntary Quit
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated June 12, 2013, reference 01, which held that the claimant was not eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was held on July 22, 2013. The claimant participated personally. The employer did not respond to the hearing notice and did not participate. The record consists of the testimony of April Underwood and Claimant's Exhibits A and B. Official notice is taken of agency records.

ISSUE:

Whether the claimant was separated from her 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 of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked off site for the employer as a worker's compensation insurance specialist. She worked for the employer full time and had been with the employer for approximately five years. Her last day of work was November 12, 2012. She was forced to leave work because she had hip and knee surgery that was not work related. She was given 12 weeks of Family Medical Leave Act (FMLA) leave and an additional six months of paid leave beyond that. The six-month leave expired on May 13, 2013. The claimant was unable to return to work and her employment was terminated. She was released to return to work without restrictions on June 1, 2013. She has been actively looking for work in the customer service field.

REASONING AND CONCLUSIONS OF LAW:

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The claimant is eligible for unemployment insurance benefits. Issues surrounding separations of employment for medical reasons and subsequent entitlement to unemployment insurance benefits are among the most challenging in unemployment insurance law. The evidence in this case showed that the claimant was unable to return to work until shortly after she had exhausted all of the leave given to her by her employer. By the time her doctor permitted her to return to full-time work on June 1, 2013, she had already been terminated by the employer. Although the employer regards this separation as a voluntary quit, Iowa law requires that there be an intent on the part of the claimant to quit and an overt act that shows that intent. The claimant here did not quit her job. She was separated from her employment by the employer. This is not a voluntary quit. Rather it is a non-disqualifying discharge and the claimant is eligible for unemployment insurance benefits, provided she meets all other eligibility requirements.

Iowa Code Section 96.4-3 requires individuals who seek unemployment insurance benefits be able and available for work. The claimant was released by her doctor on June 1, 2013, and she is currently looking for work. She has a part-time job, which is further evidence of her ability to work. The claimant is considered able and available for benefits effective June 1, 2013.

DECISION:

The decision of the representative dated June 12, 2013, is reversed. Benefits are allowed if the claimant meets all other eligibility requirements. She is considered able and available for work as of June 1, 2013.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs