

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NICKI J HARRINGTON**

Claimant

**APPEAL NO: 08A-UI-00961-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PAYLESS SHOESOURCE INC**

Employer

**OC: 12/30/07 R: 01  
Claimant: Appellant (1)R**

Section 96.5-1 - Voluntary Quit

**STATEMENT OF THE CASE:**

Nicki Harrington (claimant) appealed a representative's January 18, 2008 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Payless Shoesource (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 12, 2008. The claimant participated personally. The employer was represented by Jerry Sander, Hearings Representative, and participated by Suzette Hughes, Store Manager. The claimant offered and Exhibit A was received into evidence.

**ISSUE:**

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

**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 on September 13, 2004, as a full-time assistant manager. The claimant began to have foot problems and took time off work. Her physician returned her to work on September 21, 2007, so long as she worked eight-hour days and could wear an orthotic. The claimant's physician restricted her from working from November 12 through December 3, 2007, and then from December 4 through 10, 2007. The claimant returned to work and did not inform the employer of any additional foot issues. The employer allowed the claimant to sit in a rolling chair any time she needed to do so.

The claimant decided she needed to take time off work to give her feet a rest even though her physician did not advise it. The claimant told the employer her last day of work would be December 21, 2007, and that she was quitting to work for a different employer. The claimant's last day of work was December 21, 2007. She started her new job on January 11, 2008. 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 due to foot problems but not under the advice of her physician. The employer consented to her leaving. The claimant has failed to provide the employer with certification that she has recovered. In addition the claimant has failed to offer her services to the employer. The claimant has failed to meet the requirements of the statute and, therefore, is not eligible to receive unemployment insurance benefits.

The issue of whether the claimant is able and available for employment is remanded.

**DECISION:**

The representative's January 18, 2008 decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The issue of whether the claimant is able and available for work is remanded.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs