

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

PAMELA M POLLY

Claimant,

and

CAPTAIN & COMPANY

Employer.

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HEARING NUMBER: 10B-UI-02303

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-1C

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The claimant, Pamela M. Polly, was employed by Captain & Co. from February 25, 2008 through February 8, 2010 as a full-time supervisor. (Tr. unnumbered p. 1, 5) The claimant's grandfather became ill. (Tr. 2-3) Both he and the claimant's grandmother had adopted the claimant back on June 15, 1985 (Tr. 2, 4), and were considered her legal parents. (Tr. 2, 4, 17) On November 30, 2009, the claimant requested time off to take care of her grandfather who lived in Colorado. (Tr. 10) The claimant was unable to say how long she would be gone. (Tr. 6) The employer told her they could not guarantee her position when she came back. (Tr. 8)

On December 4, 2009, the claimant left to care for her grandfather because her aging grandmother was unable to provide 24-hour care. (Tr. 3, 6) Ms. Polly contacted the employer at the end of December to let them know she was still there. (Tr. 8) The employer called her on January 6th to inform her that she would not longer have insurance at the end of the month. (Tr. 2, 4-5, 19) She was also told that "...the guys said we have to let you go." (Tr. 7, 11, 21) The employer indicated that the only work the employer would have available, if she returned, was part-time work. (Tr. 7, 9, 10, 11, 16) The claimant contacted the employer stating that she could not accept part-time work. (Tr. 7, 9, 21)

On January 12th, 2010, the claimant's grandfather died. (Tr. 3, 11) Believing she no longer had a job (Tr. 3, 11-12, 16), Ms. Polly stayed on to "... [help her] grandmother gets stuff in order and [help] with funeral services..." (Tr. 3) The claimant returned home on February 8, 2010. She returned to the employer and was told they had no work; she turned in her uniform and keys. (Tr. 4, 7, 9)

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)"c" (2009) provides:

An individual shall be disqualified for benefits: *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:

The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

It is clear from this record that Ms. Polly had permission to go on a leave of absence to take care of her dying grandfather. (Tr. 8, 10) At first blush, this case appears to come under the purview of a 96.5(1)"c" since the claimant's only reason for leaving her employment in the first place was to care for her grandfather who was legally her father, "...a member of the individual's immediate family who was then...ill..." as within the meaning of the statute. However, the statute requires that an individual return to offer her services. Here, Ms. Polly's return to offer her services after her grandfather's death was thwarted by the employer's call on January 6th, which essentially terminated her former position before she had a chance to come back to it. Although the claimant had already informed the employer that she could not give them a specific return date at the end of December, she nonetheless expressed her intention to return once the matter was resolved.

The claimant's testimony that the employer 'let her go' was credible in light of the fact that her insurance was soon to expire and the employer had no full-time work for which she could fill. Their only stated option that she reapply for part-time work once she returned is probative that the employer initiated her separation. Any reasonable person would presume they had been terminated under the circumstances. And based on that presumption, she believed in good faith that she had no job to return to. The claimant did what any other reasonable person would have done, i.e., assist in the preparation and stay for their parent's funeral. A claimant who is terminated prior to a return from a leave of absence is not obligated to return to the employer to offer services after the expiration of the leave of absence. The rationale being that the claimant no longer has an employment relationship to which the claimant can return.

Jackman Corporation, August 27, 2003, Court of Appeals Unpublished Case No. 3-408/02-1583. For this reason, we conclude that the claimant did not voluntarily quit her employment. Substantial evidence supports that she was terminated, and even when she did return, the employer offered her no work. (Tr. 4, 7. 9)

DECISION:

The administrative law judge's decision dated March 25, 2010 is **REVERSED**. The claimant did not voluntarily quit, but was discharged for no disqualifying reason. Accordingly, she is allowed benefits provided she is otherwise eligible.

John A. Peno

Elizabeth L. Seiser

AMG/ss

DISSENTING OPINION OF MONIQUE F. KUESTER:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

Monique F. Kuester

AMG/ss