

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DANA N LAVEINE**

Claimant

**APPEAL NO. 07A-UI-01674-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BRAND NEW DAY INC**

Employer

**OC: 12-31-06 R: 04  
Claimant: Respondent (2)**

Section 96.4-3 – Able and Available  
871 IAC 24.23(26) – Same Hours and Wages  
Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 7, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on March 5, 2007. The claimant did participate. The employer did participate through Nancy Orr, Owner.

**ISSUE:**

Is the claimant still employed at the same hours and wages?

Was the claimant discharged for work-related misconduct or did she voluntarily quit her employment without good cause attributable to the employer?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a window cleaner part time beginning November 8, 2006 through February 18, 2006 when she voluntarily quit her job.

The claimant was hired to work on Tuesday, Thursday and Friday from 7:15 a.m. until the jobs were completed, generally until around 5:00 p.m. She was not guaranteed any particular number of hours of work. During the week of February 13, 2007 the claimant called in and indicated that she could not work due to her children's illness. The employer contends they never heard from the claimant again. The claimant alleges that she called the employer on February 18 and left a message on Lynn Orr's voice mail asking what her work schedule would be for the coming week. The claimant never heard back from the employer so she assumed she had been discharged. The claimant admits that no one ever told her she was discharged.

The claimant did not work during the week of February 13 because her children were sick, not because of any shortage of hours from the employer.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work the week ending February 17, 2007.

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(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

The only reason the claimant did not work on February 13 was because her children were ill and she needed to be home with them. The claimant was not shorted any hours by the employer, it was her choice not to work.

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment without good cause attributable to the employer.

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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2 (amended 1998). Generally, when an individual mistakenly believes they are discharged from employment, but were not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. The claimant had merely to call the employer again after February 18, assuming she did call on February 18 to inquire about her hours and she would have been told to report to work. The fact that the employer has hired someone to replace the claimant indicates that during the week of February 18, work was available for the claimant. Accordingly, benefits are denied.

**DECISION:**

The February 7, 2007, reference 01, decision is reversed. The claimant is not able to work and available for work effective for the week ending February 17, 2007. The claimant voluntarily quit her employment on February 18, 2007 without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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