

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMMY R COLEMAN
Claimant

APPEAL NO. 10A-UI-03398-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REACH FOR YOUR POTENTIAL INC
Employer

**Original Claim: 03/01/09
Claimant: Appellant (5)**

Section 96.5-1 – Voluntary Leaving
871 IAC 24.22(2)j – Leave of Absence
871 IAC 24.25(35) – Separation Due to Illness or Injury
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Tammy R. Coleman (claimant) appealed a representative's February 17, 2010 decision (reference 06) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Reach For Your Potential, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 11, 2010. The claimant participated in the hearing. Larisah Sheldon appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

Is the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on December 21, 2005. She worked full-time as a direct care staff person in one of the employer's homes providing care for persons with intellectual disabilities. Her last day of work was on or about December 6, 2009.

The claimant was scheduled to begin a maternity leave under FMLA (Family Medical Leave) on December 29. However, due to some medical complications, including suffering a stroke on or about December 16, the claimant was unable to work as planned between December 7 and December 28. She gave birth by Cesarean section on December 21. The claimant was then scheduled to return to work from her leave on March 21, 2010.

The claimant suffered another stroke in about mid January. As a result, she has suffered some paralysis to one side; her doctor gave her a note on March 3 indicating that due to the stroke, the claimant would be unable to return to work at least until June. The claimant provided a copy of this note to the employer on or about March 11.

On April 2 the employer sent the claimant a letter advising her that the leave period was ended and that if the claimant did not return to work immediately, it could no longer hold her position for her. The employer inquired whether there were any accommodations that could be provided so as to allow the claimant to return to work in at least some fashion. However, the claimant's doctor was indicating to her that she could not do any work, so the claimant did not request any accommodations or seek to return to work. As a result, on April 9 the employer sent another letter to the claimant indicating that as the claimant had not returned to work, it deemed her employment to have ended.

The claimant established an unemployment insurance benefit year effective March 1, 2009. She reopened the claim by filing an additional claim effective January 10, 2010.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. A voluntary quit is a termination of employment initiated by the employee – where the employee has instigated the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has instigated the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A mutually agreed-upon leave of absence is deemed a period of voluntary unemployment. 871 IAC 24.22(2)j. However, if at the end of the leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits; and, conversely, if at the end of the leave of absence the employee fails to return and subsequently becomes unemployed, the employee is considered as having voluntarily quit and therefore is ineligible for benefits. Id.

Here, the claimant failed to return at the end of the leave of absence, and is deemed to have voluntarily quit the employment effective March 21, 2010. The claimant therefore has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. Where a quit is for medical or health reasons, the quit is disqualifying at least until the claimant has recovered and seeks to return to work unless the medical or health issue is attributable to the employer. Iowa Code § 96.5-1; 871 IAC 24.25(35); 871 IAC 24.26(6)b.

Where a claimant has been compelled to leave employment upon the advice of her physician due to a medical or health issue not caused or aggravated by the work environment, the claimant is not eligible to receive unemployment insurance benefits until or unless the claimant then recovers, is released to return to work by her physician, and in fact does attempt to return to work with the employer. 871 IAC 24.25(35). A “recovery” under Iowa Code § 96.5-1-d means a complete recovery without restriction. Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa App. 1985). The claimant has not been released to return to full work duties. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied until or unless she is fully released and does attempt to return to work with the employer.

For each week for which a claimant seeks unemployment insurance benefits, she must be able and available for work. Iowa Code § 96.4-3. In general, an employee who is only temporarily separated from her employment due to being on a leave of absence is not "able and available" for work during the period of the leave, as it is treated as a period of voluntary unemployment. 871 IAC 24.22(2); 871 IAC 24.23(10)

The claimant's unemployment between the reopening of her claim effective January 10 and March 21, 2010 was due to her being on a leave of absence due to a non-work-related medical issue. As the condition causing her then temporary unemployment was not related to the work environment, she was not able and available for work and was not eligible to receive unemployment insurance benefits for that period. 871 IAC 24.22(2); 871 IAC 24.23(10).

Further, another part of the requirement to be able and available for work is that the claimant be available for work on the same basis as when she was previously working and earning the wage credits on which her unemployment insurance benefits would be based. Iowa Code § 96.4-3; 871 IAC 24.22(2)(a). The claimant is presently not able and available for any work. Unemployment insurance benefits are not intended to substitute for health or disability benefits. White v. Employment Appeal Board, 487 N.W.2d 342 (Iowa 1992). Therefore, benefits are denied at least until such time as the claimant becomes able and makes herself available to work full time.

DECISION:

The representative's February 17, 2010 decision (reference 06) is modified with no effect on the parties. The claimant voluntarily left her employment without good cause attributable to the employer. As of March 21, 2010, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible, or until she is fully released and does attempt to return to work with the employer but no work is then available for her with the employer. As of at least January 10, 2010, she was on a leave of absence and not able and available for work or eligible to receive unemployment insurance benefits for this period preceding the separation; also, she is not able and available to work on the same full-time basis as when her wage credits were accrued.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw