

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEISHA N RANKIN
Claimant

APPEAL NO. 11A-UI-11864-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA HOME CARE
Employer

OC: 07/24/11
Claimant: Appellant (4)

Section 96.5-1-d – Voluntary Quit for Medical Reasons
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Keisha Rankin (claimant) appealed a representative's September 6, 2011 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she had voluntarily quit employment with Iowa Home Care (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 4, 2011. The claimant participated personally. The employer participated by Jennifer Holtorf, human resources assistant; Cindy Robinson, registered nurse/home health aide supervisor; and Andi Bacon, registered nurse/administrator.

ISSUES:

Whether the claimant is denied unemployment insurance benefits because she voluntarily quit work without good cause attributable to the employer.

Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on August 9, 2010, as a full-time home health aide. On June 6, 2011, the claimant became a part-time home health aide. On June 28 and July 5, 2011, the claimant's physician provided a note indicating the claimant could work with restrictions due to her pregnancy. The employer did not have restricted work for the claimant. The claimant is due to give birth on December 10, 2011. After the birth, the restrictions will be lifted. Continued work was available had the claimant's activities not been restricted.

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). A "recovery" under Iowa Code Section 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 left work due to pregnancy under the advice of her physician. The employer consented to her leaving. The claimant has not provided the employer with certification that she can return to work without restrictions. The claimant has not met the requirements of the statute and, therefore, is not eligible to receive unemployment insurance benefits. The claimant may requalify by returning to the employer with an unconditional release. The claimant could then receive benefits if regular work or comparable suitable work was not available.

The next issue is whether the claimant was able and available for work. For the following reasons, the administrative law judge concludes she is.

871 IAC 24.23(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

When an employee is pregnant and unable to perform work due to that pregnancy she is considered to be unavailable for work. The claimant was released to return to work with restrictions by her physician. She is considered to be available for work because the physician stated she was able and available for work. The claimant is not disqualified from receiving unemployment insurance benefits.

DECISION:

The representative's September 6, 2011 decision (reference 01) is modified in favor of the appellant. 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 claimant is not eligible but is qualified to receive unemployment insurance benefits.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw